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THE LETTERS AND THE LIFE

OF

FRANCIS BACON

INCLUDING ALL HIS

OCCASIONAL WORKS

NAMELY

LETTERS SPEECHES TRACTS STATE PAPERS MEMORIALS DEVICES AND ALL AUTHENTIC WRITINGS NOT ALREADY PRINTED AMONG HIS PHILOSOPHICAL LITERARY OR PROFESSIONAL WORKS

NEWLY COLLECTED AND SET FORTH

IN CHRONOLOGICAL ORDER

WITH A

COMMENTARY BIOGRAPHICAL AND HISTORICAL

26686

BY

JAMES SPEDDING

VOL. V.

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PREFACE.

THE last volume ended with the first work of Bacon's Attorney Generalship. The present carries him almost, but not quite, to the end of the period during which he held that office. It was one of his periods of highest political activity; in which many matters of great immediate importance in their own day, and probably of great ultimate importance to the whole subsequent history of England, fell to his charge. The Parliament of 1614, with its high hopes, fair promises, and disastrous issue; the attempt to raise supplies by a "Benevolence," which followed; —the legal proceedings against Talbot, for refusing to repudiate the Jesuits' doctrine of king-killing; against Peacham, for treasonable words intended to be preached; against Owen, for treasonable words spoken; against Oliver St. John, for slander of the King and Council;—the consultation of Judges single and apart;—the deliberations concerning the calling of another Parliament, with the precautions to be used, the subjects to be proposed, and the courses to be held;—the trial of the Earl and Countess of Somerset for the murder of Overbury;—the dispute between the Crown and the Judges in the case of *Rege inconsulto*;—the assault by the Court of King's Bench upon the Court of Chancery, in the case of *Præmunire*;—the first essay of government in Ireland through a Parliament of its own;—All these come within the period embraced in this volume; and they were all matters in which Bacon was, one way or other, personally engaged,—in some as adviser and manager, in some as actor under the direction of superiors, in some as a kind of intruder with advice unasked. Of his papers relating to them, some have remained till now, not only unprinted, but unknown;

and supply new and unexpected information as to his political views and action. Among these I may especially mention the sketch of the speech which he wished the King to make to the two Houses at the meeting of Parliament in 1614, for the knowledge of which, with permission to print it, I am indebted to Mr. David Laing; and the long letter of advice, printed by permission of the Masters of the Bench from a copy in the Inner Temple library, which he addressed to him in the following year. Taken along with the letters and notes on the same subject which appeared in the last volume (pp. 365–373), these two papers complete our knowledge of Bacon's part in that well deserving and ill succeeding enterprise, and disclose to us the whole history, from his point of view, of the design, the hopes, the preparations, the errors, the causes of failure, and the instructions for the future to be gathered therefrom.

The short paper of "points to be observed" in the collection of the Benevolence (from which we learn for the first time how far and with what conditions and limitations he was a party to that measure), may also be mentioned among the more notable novelties. And the Decree on the *Præmunire* question, in the absence of which the history of that business was left very incomplete, may be added to the list. Though not new absolutely (for the substance of it may be gathered from a treatise in the first volume of the *Collectanea Juridica*), it is not to be found, so far as I know, in any more common book, and will therefore be quite new, I presume, to the great majority of readers.

With regard to the other subjects contained in the volume, the more orderly arrangement of the papers and the collateral information supplied in the Commentary form the chief novelty. But it will be found to be a novelty of some consequence. It has been the fashion for the last thirty years to find great fault with Bacon for the part he took in some of these transactions. I think it will now appear that the judgment has in most cases been pronounced under a considerable misapprehension of the facts; and that when the story is truly told, the aspect of it in relation to him is materially altered: so much so that the same Judges, if the case had been so presented to them at first, would

probably have judged differently. Whether my version of the story be really the truer, is a question no doubt which may and will be disputed. But it is a question of fact. Where it differs from the common version, it aspires to differ by being in better accordance with the evidence. Now the evidence is within anybody's reach. Though I cannot hope that among my many references there are no wrong figures (for a mistake of that kind, once made, is of all mistakes the most likely to escape detection), I am quite sure that none of them are imaginary; I have tried to make them all distinct; and I hope that before my statements of the case are condemned as inaccurate, the evidence to which I appeal will be examined and weighed. The question which I have undertaken to deal with is not whether Bacon was wise or foolish, virtuous or wicked, but *what he thought about the occasions of his time;* and to make that knowledge of any value it is necessary to ascertain correctly what the occasions really were.

J. S.

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LETTERS AND LIFE OF FRANCIS BACON.

BOOK V.

CHAPTER I.

A.D. 1613–14. ÆTAT. 54.

1.

THE question of calling a new Parliament, which had been postponed in the preceding summer,[1] does not appear to have been formally agreed upon in Council till the middle of February. But I think the King had made up his mind to it before. A letter of Bacon's, which dates itself by a reference to the rejoicings upon the birth of the King's grandchild as written not long after the 9th of January, 1613–4, shows that before that time the King had been speaking with him about the preparatory measures, and had also been in communication with "those gentlemen which professed to do him service in Parliament;"—who could be no other than Sir Henry Neville and his party; afterwards known as the "Undertakers." It shows also (which is a fact of some importance) that though desirous to make the best of their services, Bacon himself augured little good from their intervention.

TO THE KING.[2]

It may please your most exc. M.

I most humbly pray your M. to receive into your royal remembrance that one point whereof you spake unto me: which

[1] See Vol. IV. p. 378.

[2] Cott. MSS: Tit. F. IV. f. 333. All fairly written in Bacon's own hand. No date, docket or superscription. Fly-leaf gone, I think.

is this; to put but this case to those gentlemen which profess to do you service in Parliament, and desire (as they say) but to have some matter whereupon to work: If your M. be resolved not to buy and sell this Parliament, but to perform the part of a King, and not of a merchant or contractor, what they can desire or propound for the satisfaction and comfort of your people.

Of this three uses may be made.

First, if they fall upon an answer as to say, That the Parliament is so now in taste with matters of substance and profit, as it is in vain to think to draw them on but by some offer of that nature, then for my part I shall little esteem their service if they confess themselves to be but brokers for bargains.

Secondly, if they do devise and propound anything that is fit, then that it be followed and pursued, because they are likest to be in love with their own child, and to nourish it.

Thirdly, if they show good will to devise some such thing, but that their invention prove barren, in that their proposition be not such but that better may be found, then that they may be holpen by some better proposition from your M. whereupon they may work.

This, because time runneth, I beseech your M. may be put unto them by some such mean as your M. is pleased to use, as soon as may be.

I most humbly pray your M. also to take into consideration, that it may be inconvenient for your M. to have a Parliament in England and a Parliament in Ireland at one time. And therefore I do wish that the Parliament of Ireland (when time shall be) may upon some occasion fitly taken be put off. For I beseech your M. to observe this argument furder: That the unsettled business of the Parliament of Ireland is a just ground for the Parliament of England to furnish your M. with treasure *in omnem eventum*. And on the other side the loving and frank proceeding with you by your Parliament of England will daunt the ill affected part of the Parliament of Ireland.

If your M. had heard and seen the thunder of the bells and the lightning of the bonfires for your grandchild, you would say there is little cause to doubt the affections of the people of England *in puris naturalibus*. God preserve your Majesty. I rest

Your M.'s most bounden servant,

FR. BACON.

It is possible that some of the papers mentioned in my note p. 364, Vol. IV., belong to this date, and were submitted to the King or Council in answer to the question here suggested by Bacon. But the largest and completest of them,—the "collection of such things as have been by several men desired to be obtained of his Majesty for the good of his people"—so well answers the description of the memorial subjoined to Sir Henry Neville's "Advice touching the holding of a Parliament,"[1] that, whether Bacon knew of it or not, there can be little doubt that the King had seen it some months before. I have not, however, been able to find any further particulars of his communications with that party, and in the absence of these it seems impossible to guess how far his subsequent proceedings were guided by them, and whether they had enough of their own way to be fairly chargeable with the issue. It is certain that they were entertained in conference and encouraged to give advice by some of the great councillors, but not so certain that they were fairly and frankly dealt with.[2] Bacon in the meantime had other businesses to attend to.

2.

The first was a matter of no great consequence to us; but may serve for an illustration of the caution with which criminal justice was really conducted in those days by the Crown. It is true that the powers assumed by the Crown gave it the *means* of obtaining the conviction upon insufficient evidence of almost anybody who fell under suspicion of treason. But it is not at all true that those means were lightly put in force. Whether from fear of public opinion, or from doubt of what Judges and Juries would do, or simply from respect for justice itself, it is certain that the officers whose business was to prosecute were always anxious to avoid a public proceeding upon evidence which was not plausible. Even in Coke's time, it was not the disposition to proceed without evidence that suspected persons had to complain of, but the indiscriminate appetite which accepted as evidence anything which favoured his preconceived opinion. Bacon was not so easily satisfied: and here we have an example of what happened where proof enough was not

[1] "Yet what I have collected out of the desires of sundry of the principal and most understanding gentlemen that were of the last Parliament, and are like to be of this, I will be bold to deliver in a memorial subjoined," etc.—Gardiner, ii. p. 391. The "advice" dates itself approximately by naming Michaelmas as the earliest time when the Parliament could begin: whence it follows that the summer of 1613 is the latest date that can be assigned to it.

[2] See a letter from Suffolk to Somerset, quoted by Gardiner, ii. p. 145.

forthcoming to satisfy the Crown-prosecutor that the suspected man was really guilty.

On the 11th of June, 1612, a proclamation had been issued for the apprehension of John Cotton, a gentleman of Hampshire, on suspicion of high-treason.[1] The supposed treason, I believe, was the authorship or circulation of a scandalous book, called 'Balaam's Ass.' Hearing of the proclamation, he gave himself up. Being charged with the authorship of the book and denying it, his study was searched: and there were found "divers papers containing many pieces of the said book," together with some relics of the martyrs of the Gunpowder Plot,—a finger of Sir Everard Digby, a toe of Percy, and the like.[2] These were thought circumstances suspicious enough to justify his detention, pending further inquiry. The particulars of that inquiry (which appears to have been in the hands of the Archbishop of Canterbury) are not preserved: but the following report shows how the case stood half a year after, in the opinion of the King's Attorney, Solicitor, and Sergeant, to whom it had been referred.

TO THE KING.[3]

It may please your most excellent Majesty,

We have, with all possible care and diligence considered of Cotton's cause, the former and the latter, touching the book and the letter in the gilt apple, and have advisedly perused and weighed all the examinations and collections which were formerly taken; wherein we must attribute a good deal of worthy industry and watchful inquiry to my Lord of Canterbury. We thought fit also to take some new examinations; which was the cause we certified no sooner. Upon the whole matter, we find the cause of his imprisonment just, and the suspicions and presumptions many and great; which we little need to mention, because your Majesty did relate and inforce them to us in better perfection than we can express them. But nevertheless, the proofs seem to us to amount to this: that it was possible he should be the man; and that it was probable likewise he was the man: but no convicting proofs that may satisfy a jury of life and death, or that may make us take it upon our conscience, or to think it agreeable to your Majesty's honour (which, next our conscience to God, is the dearest thing to us on earth) to

[1] Cal. State Papers.
[2] Lorkin to Puckering, 30th June, 1613. C. & T. of James I. vol. i. p. 251.
[3] Advocates Library, A. I. 35. Original; in Bacon's hand.

bring it upon the stage: which notwithstanding we in all humbleness submit to your Majesty's better judgment. For his liberty and the manner of his delivery (he having so many notes of a dangerous man) we leave it to your princely wisdom. And so commending your Majesty to God's precious custody, we rest

Your Majesty's most humble and bounden servants,

FR. BACON.
H. MONTAGU.
22 Jan. 1613. H. YELVERTON.

Upon this report it seems that Cotton was kept in prison till 1618, when the real author of the book was discovered.

3.

I mentioned in the last chapter (p. 388) that one of the members of the Irish deputation having declined to repudiate in distinct terms certain doctrines of Zuares concerning the duty of Catholic subjects towards heretical kings, it had been thought necessary to deal with the case judicially. This was William Talbot, a member of the Irish Parliament, one of the leaders of the Catholic party, and said to be "their chief oracle for law."[1] He had been committed to the Tower on the 17th of July, and as he still refused to make any further submission, order had been given on the 19th of November to proceed against him in the Star Chamber.[2] He does not appear to have been accused or suspected of any personal disloyalty, and I suppose the object of the proceeding was only to establish and proclaim the point of law by a formal sentence of the Court. The case came on for hearing at the last sitting in Hilary Term (31st January, 1613-14), when Bacon delivered the following charge.

CHARGE AGAINST WILLIAM TALBOT.[3]

My Lords,

I brought before you at the first sitting of this term the cause of duels; but now this last sitting I shall bring before you a cause concerning the greatest duel which is in the Christian world, the duel and conflict between the lawful authority of sovereign kings, which is God's ordinance for the comfort of human society, and the swelling pride and usurpation of the See of Rome, even *in temporalibus*, tending altogether to anarchy and

[1] Desid. Cur. Hib. i. p. 393. [2] Gardiner, ii. p. 315.
[3] Harl. MSS. 6797 f. 172. Fair copy. Corrected throughout in Bacon's hand. Docketed "Speech against Talbott," and (in another place by a later hand) "Talbot the faire copie."

confusion: Wherein if this pretence in the Pope of Rome by cartels to make sovereign princes as the Banditti, and to proscribe their lives, and to expose their kingdoms to prey; if these pretences, I say, and all persons that submit themselves to that part of the Pope's power in the least degree be not by all possible severity repressed and punished, the state of Christian Kings will be no other than the ancient torment described by the poets in the hell of the heathen; *a man sitting richly robed, solemnly attended, delicious fare, &c. with a sword hanging over his head, hanging by a small thread, ready every moment to be cut down by an accursing and accursed hand.* Surely I had thought they had been the prerogatives of God alone and of his secret judgments, *Solvam cingula regum,* I will loosen the girdles of Kings; or again, *He poureth contempt upon princes;* or *I will give a King in my wrath, and take him away again in my displeasure,* and the like: but if these be the claims of a mortal man, certainly they are but the mysteries of that person which exalts himself above all that is called God, *supra omne quod dicitur Deus.* Note it well, not *above God* (though that in a sense be true) but *above all that is called God;* that is, *lawful Kings and magistrates.*

But, my Lords, in this duel I find this Talbot, that is now before you, but a coward; for he hath given ground, he hath gone backward and forward, but in such a fashion, and with such interchange of repenting and relapsing, as I cannot tell whether it doth extenuate or aggravate his offence. If he shall now publicly in the face of the court fall and settle upon a right mind, I shall be glad of it, and he that would be against the King's mercy I would be mought need the King's mercy: but nevertheless the court will proceed by rules of justice.

The offence therefore wherewith I charge this Talbot, prisoner at the bar, is this in brief and in effect: *That he hath maintained and maintaineth under his hand a power in the Pope for the deposing and murthering of Kings.* In what sort he doth this, when I come to the proper and particular charge, I will deliver it in his own words without pressing or straining.

But before I come to the particular charge of this man, I cannot proceed so coldly; but I must express unto your Lordships the extreme and imminent danger wherein our dear and dread Sovereign and in him we all, nay all Princes of both religions,

(for it is a common cause,) do stand at this day, by the spreading and inforcing of this furious and pernicious opinion of the Pope's temporal power: which though the modester sort would blanch with the distinction of *in ordine ad spiritualia*, yet that is but an elusion; for he that maketh the distinction will also make the case. This peril, though it be in itself notorious, yet because there is a kind of dulness and almost a lethargy[1] in this age, give me leave to set before you two glasses, such as certainly the like never met in one age; the glass of France, and the glass of England. In that of France the tragedies acted and executed in two immediate Kings; in the glass of England, the same or more horrible attempted likewise in a Queen and King immediate, but ending in a happy deliverance. In France, Henry III. in the face of his army, before the walls of Paris, stabbed by a wretched Jacobine frier. Henry IV. a prince that the French do surname the Great, one that had been a saviour and redeemer of his country from infinite calamities, and a restorer of that monarchy to the ancient state and splendor, and a prince almost heroical, (except it be in the point of revolt from religion), at a time when he was as it were ready to mount on horseback for the commanding of the greatest forces that of long time had been levied in France, this King likewise stilletted by a rascal votary, which had been enchanted and conjured for the purpose. In England, Queen Elizabeth of blessed memory, a Queen comparable and to be ranked with the greatest Kings, oftentimes attempted by like votaries, Sommervile, Parry, Savage, others, but still protected by the watchman that slumbereth not. Again, our excellent sovereign King James, the sweetness and clemency of whose nature were enough to quench and mortify all malignity, and a King shielded and supported by posterity; yet this King in the chair of majesty, (his vine and olive branches about him,) attended by his nobles and third estate in Parliament; ready in the twinkling of an eye, as if it had been a particular dooms-day, to have been brought to ashes, dispersed to the four winds. I noted the last day, my Lord Chief Justice, when he spake of this powder treason, he laboured for words, which though they came from him with great efficacy, yet he truly confessed, and so must all men, that *that treason is above the charge and report of any words whatsoever.*

[1] Spelt 'lytargye,' in Bacon's own hand; the clause being interlined.

Now, my Lords, I cannot let pass, but in these glasses which I spake of, besides the facts themselves and the danger, to shew you two things; the one the ways of God Almighty, which turneth the sword of Rome upon the kings that are the vassals of Rome, and over them gives it power; but protecteth those kings which have not accepted the yoke of his tyranny from the effects of his malice: the other, that (as I said at first) this is a common cause of princes; it involveth kings of both religions; and therefore his Majesty did most worthily and prudently to ring out the alarum-bell, to awake all other princes to think of it seriously and in time. But this is a miserable case the while, that these Roman soldiers do either thrust the spear into the sides of God's anointed, or at least they crown them with thorns, that is, pricking and piercing cares and fears, that they can never be quiet or secure of their lives or states. And as this peril is common to princes of both religions, so princes of both religions have been likewise equally sensible of every injury that touched their temporal. Thuanus reports in his story, that when the realm of France was interdicted by the violent proceedings of Pope Julius the second, the King, otherwise noted for a moderate prince, caused coins of gold to be stamped with his own image, and this superscription, *Perdam nomen Babylonis è terra;* of which Thuanus saith himself had seen divers pieces; so as this catholic king was so much incensed at that time, in respect of the Pope's usurpation, as he did apply Babylon to Rome. Charles the fifth emperor, who was accounted one of the Pope's best sons, yet proceeded in matter of temporal towards Pope Clement with strange rigour, never regarding the pontificality, but kept him prisoner thirteen months in a pestilent prison, was hardly dissuaded by his council from having sent him captive into Spain, made sport with the threats of Frosberg the German, who wore a silk rope under his cassock, which he would shew in all companies, telling them that he carried it to strangle the Pope with his own hands. As for Philip the fair, 'tis the ordinary example, how he brought Pope Boniface the eighth to an ignominious end, dying mad and enraged, and how he styled his rescript to the Pope's bull, whereby he challenged his temporal, *Sciat fatuitas vestra,* not your beatitude, but your stultitude; a style worthy to be continued in the like cases; for certainly that claim is mere folly and fury. As for native examples here, it is too long a

field to enter into them. Never kings of any nation kept the partition-wall between temporal and spiritual better in times of greatest superstition. I report me to King Edward I. that set up so many crosses, and yet crossed that part of the Pope's jurisdiction, no man more strongly. But these things have passed better pens and speeches: here I end them.

But now to come to the particular charge of this man, I must inform your Lordships the occasion and nature of this offence: There hath been published lately to the world a work of Zuarez[1] a Portuguese, a professor in the university of Coimbra, a confident and daring writer, such a one as Tully describes in derision, *nihil tam verens, quam ne dubitare aliqua de re videretur*: one that fears nothing but this, lest he should seem to doubt of any thing. A fellow that thinks with his magistrality and goose quill to give laws and manages to crowns and scepters. In this man's writing this doctrine of deposing or murthering kings seems to come to a higher elevation than heretofore; and it is more arted and positived than in others. For in the passages which your Lordships shall hear read anon, I find three assertions which run not in the vulgar track, but are such as wherewith men's ears (as I suppose) are not much acquainted; whereof the first is, That the Pope hath a superiority over kings, as subjects, to depose them, not only for spiritual crimes, as heresy and schism, but for faults of a temporal nature, forasmuch as a tyrannical government tendeth ever to the destruction of souls. So by this position kings of either religion are alike comprehended, and none exempted. The second, that after a sentence given by the Pope, this writer hath defined of a series, or succession, or substitution of hangmen or *bourreaux*,[2] to be sure, lest an executioner should fail; for he saith, that when a king is sentenced by the Pope to deprivation or death, the executioner who is in first place is he to whom the Pope shall commit the authority, which may be a foreign prince, it may be a particular subject, it may be general to the first undertaker. But if there be no direction or assignation in the sentence special nor general, then *de jure* it appertains to the next successor; (a natural and pious opinion; for commonly they are sons, or

[1] In the margin opposite this sentence the following note has been crossed out: "Quæ: Of the Christen name of Zuarez, and of the title of the booke."

[2] Spelt 'burreos' in the MS.

brothers, or near of kin, all's one, so as the successor be apparent, and also that he be a catholic). But if it be doubtful, or that he be no catholic, then it devolves to the commonalty of the kingdom; so as he will be sure to have it done by one minister or other. The third is, he distinguisheth of two kinds of tyrants, a tyrant in title, and a tyrant in regiment. The tyrant in regiment cannot be resisted or killed without a sentence precedent by the Pope; but a tyrant in title may be killed by any private man whatsoever. By which doctrine he hath put the judgment of kings' titles (which I will undertake are never so clear but that some vain quarrel or exception may be made unto them) upon the fancy of every private man; and also couples the judgment and execution together, that he may judge him by a blow, without any other sentence. Your Lordships see what monstrous opinions these are, and how both these beasts, the beast with seven heads, and the beast with many heads, Pope and people, are at once let in, and set upon the sacred persons of kings.

Now to go on with the narrative; There was an extract made of certain sentences and portions of this book, being of this nature that I have set forth, by a great prelate and counsellor upon a just occasion; and there being some hollowness and hesitation in these matters (wherein it is a thing impious to doubt) discovered and perceived in Talbot, he was asked his opinion concerning these opinions, in the presence of the best: and afterwards they were delivered to him, that upon advice and *sedato animo* he might declare himself; whereupon under his hand he subscribes thus;

May it please your honourable good lordships: Concerning these doctrines of Zuarez, I do perceive by what I have read in his book that the same doth concern matter of faith, the controversy growing upon exposition of Scriptures and councils, wherein (being ignorant and not studied) I cannot take upon me to judge. But I do submit mine opinion therein to the judgment of the catholic Roman church, as in all other points concerning faith I do. And for matter concerning my loyalty, I do acknowledge my sovereign Liege Lord King James to be lawful and undoubted king of all the kingdoms of England, Scotland, and Ireland, and I will bear true faith and allegiance to his Highness during my life.

WILLIAM TALBOT.

My Lords, upon these words I conceive Talbot hath committed a great offence, and such a one, as if he had entered into a voluntary and malicious publication of the like writing, it would have been too great an offence for the capacity of this court. But because it grew by a question asked by a council of estate, and so rather seemeth in a favourable construction to proceed from a kind of submission to answer than from any malicious or insolent will, it was fit according to the clemency of these times to proceed in this manner before your Lordships: and yet let the hearers take these things right; for certainly, if a man be required by the Council to deliver his opinion *whether King James be king or no?* and he deliver his opinion that he is not, this is high treason: but I do not say that these words amount to that; and therefore let me open them truly to your Lordships, and therein open also the understanding of the offender himself, how far they reach. My lords, a man's allegiance must be independent and certain, and not dependent and conditional. Elizabeth Barton, that was called the holy maid of Kent, affirmed that *if King Henry VIII. did not take Catharine of Spain again to his wife within a twelvemonth, he should be no king:* and this was treason. For though this act be contingent and future, yet the preparing of the treason is present. And in like manner, if a man should voluntarily publish or maintain that whensoever a bull of deprivation shall come forth against the King, that from thenceforth he is no longer king, this is of like nature. But with this I do not charge you neither; but this is the true latitude of your words, That *if the doctrine touching the killing of kings be matter of faith, then you submit yourself to the judgment of the catholic Roman church:* so as now (to do you right) your allegiance doth not depend simply upon a sentence of the Pope of deprivation against the King; but upon another point also,—if these doctrines be already, or shall be declared to be, matter of faith. But, my Lords, there is little won in this. There may be some difference to the guilt of the party, but there is little to the danger of the King. For the same Pope of Rome may with the same breath declare both. So as still upon the matter the King is made but tenant at will of his life and kingdoms, and the allegiance of his subjects is pinned upon the Pope's acts. And certainly, 'tis time to stop the current of this opinion of acknowledgment of the Pope's power *in temporalibus*, or else it will

sap and supplant the King's seat. And let it not be mistaken that Mr. Talbot's offence should be no more than refusing the oath of allegiance. For it is one thing to be silent, and another thing to affirm. As for the point of matter of faith, or not of faith, to tell your Lordships plain, it would astonish a man to see the gulf of this implied belief. Is nothing exempted from it? If a man should ask Mr. Talbot whether he do condemn murther, or adultery, or rape, or the doctrine of Mahomet, or of Arius, instead of Zuarius; must the answer be with this exception, that if the question concern matter of faith (as no question it doth, for the moral law is matter of faith), that therein he will submit himself to what the Church shall determine? And no doubt the murther of princes is more than simple murther. But to conclude (Talbot) I will do you this right, and I will not be reserved in this, but to declare that that is true, that you came afterwards to a better mind; wherein if you had been constant, the King out of his great goodness was resolved not to have proceeded with you in course of justice: but then again you started aside like a broken bow, so that by your variety and vacillation you lost the acceptable time of the first grace, which was not to have convented you. Nay, I'll go further with you: your last submission I conceive to be satisfactory and complete; but then 't was too late; the King's honour was upon it; it was published and day appointed for hearing; yet what preparation that may be to the second grace of pardon, that I know not: but I know my Lords out of their accustomed favour will admit you not only to your defence concerning that that hath been charged, but to extenuate your fault by any submission that now God shall put into your mind to make.

It is plain enough from the tenour of the concluding remarks that the object of this proceeding was to enforce submission upon the point in dispute, but not to inflict any further punishment: and though the sentence of the Court was a fine of 10,000*l.*, it does not appear that Talbot was required to pay it; and when the rest of his countrymen returned to Ireland he was allowed to go with them.[1]

4.

What particular communications passed between the King and the "Undertakers," I have not (as I said) been able to discover.

[1] Desid. Cur. Hibern. vol. i. p. 321.

But there is some reason to believe that he put to them the question which Bacon suggested; that they in reply submitted to him their proposition; and that he referred it to his Learned Counsel for their report. It is certain that some proposition relative to the coming Parliament, and involving a variety of questions, was referred to them by the King some time before the 17th of February: and it is not likely to have come from the Council of State, because it was not till the 16th that the Lords of the Council made up their minds to recommend the calling of a Parliament at all.[1] Of the nature of the proposition however we know no more than can be gathered from the following letter to Somerset; which though signed by all the Learned Counsel is written throughout in Bacon's own hand, and may be presumed therefore to have been drawn up by him.

To the R. Hon. our very good L. the Earl of Somerset, of his M.'s most hon. privy Council.[2]

It may please your good L.

Such has been our instant business of service, whereof we are able to make his M. a daily and almost hourly account, as we could not meet in conference touching the propositions for Parliament delivered to us by his M. till this present day.

This day we have met twice; the forenoon amongst ourselves, and the afternoon in presence of my L. Chancellor; and do find the matters (being weighty and of very several natures) so unfit for a sudden answer, as we must become humble suitors to his M. both to give us further time of deliberation, and also, because when we shall come to give an opinion it will (in many of them) be upon such differences and limitations as will exceed the length of a letter, that his M. will give us leave to deliver our conceit by word of mouth; where also his M.'s own questions, which are ever judicious and apposite, may help us to give his M. better satisfaction than of ourselves we are able to direct. So concluding our humble service to your L. we rest

At your Lps hon. commandments,

Edw. Coke.
Henry Hobarte.
Fr. Bacon.
H. Montagu.
Henry Yelverton.

This Thursday at even
the 17th of Feb. 1613.

[1] S. P. Dom. James I., vol. lxxvi., No. 22.
[2] S. P. Dom. James I., vol. lxxvi., No. 26. Original: all in Bacon's hand.

Of what passed between the King and his Learned Counsel in the consultation which, I presume, followed, no record that I know of has been preserved. But in his Council of State in the meantime the dissentient party had at last given way. A resolution had been passed that it was expedient to call a Parliament with as little delay as possible. With that view the petition of grievances had been perused, and a selection made of those which might without prejudice be redressed.[1] And in a list which has been preserved of the titles of several bills to be drawn or to be further consulted upon, we may trace the resultant of the various forces that were acting upon the government.

The first eight of these being described as bills to be drawn "upon certain of the propositions exhibited unto his Majesty," I take them to be the practical result of the King's communications, first with the "Undertakers," and afterwards with his Learned Counsel; the "propositions exhibited unto his Majesty" being those which they had submitted in answer to the question which by Bacon's advice he had put to them; the "bills to be drawn" upon them being the "following and pursuing" by the government of such of them as were reported by the Learned Counsel to be "fit." The remainder of the list,—consisting of bills to be drawn "upon other heads besides those that were propounded," of "secret bills," and of "other bills to be propounded, not yet consulted upon,"—represents probably the policy of the regular advisers of the government, and the measures which they thought it expedient to urge, or to offer, or to acquiesce in: and though it is but a list of titles, it will be found to throw so much light upon the whole business and history of the coming session, into the details of which, as of an event of immense consequence, I shall have to enter minutely, that I have thought it worth printing *in extenso* as it stands.

I take it from two different manuscripts; the first containing only a few heads, but being a contemporary transcript in a hand frequently employed by Bacon, and made probably under his direction;[2] the other being merely a collector's copy,[3] but apparently complete.

Bills to be drawn by his Ma^ty's most gracious direction for the good and comfort of his people upon certain of the propositions exhibited to his Ma^ty, and to be offered to the Parliament.

1. An act for the passing the accounts of Sheriffs, Escheators, Collectors of Subsidies, Tenths, Fifteenths and Aids, without charge or delay.

[1] S. P. Dom. James I., vol. lxxvi., No. 23. 16 Feb. 1613–4.
[2] Cott. MSS. Tit. F. iv. f. 345. [3] Harl. MSS. 6258. A. f. 45.

2. An act for the better avoiding secret offices and inquisitions to be taken on his Ma^ty's behalf to the prejudice of his subjects.
3. An act giving authority to certain Commissioners to review the state of penal laws, to the end that such as are obsolete and snaring may be repealed, and such as are fit to continue and concern one matter may be reduced respectively into one clear form of law.
4. An act for the safeguard and relief of the King's tenants and farmers in case of forfeiture for non-payment of rent.

Bills to be drawn by his M^ty's most gracious direction for the good and comfort of his people, upon certain other of the propositions exhibited to his Majesty, to be ready if they be sued for by his Commons.

1. An act for the ordering of the respect of homage to be with less charge and trouble to his Ma^ty's subjects.
2. An act for the avoiding of the trouble and charge of the King's subjects in the pleadings of the Exchequer in case of alienation by the King's tenants.
3. An act for the admitting of the King's subjects to plead the general issue and to continue their possession in certain cases upon informations of intrusion exhibited against them.
4. An act for the repeal of a branch of the statute of 34°. H. 8. concerning the alteration of laws in Wales without Parliament.

Here the Cotton manuscript ends. But in the Harleian collection there is a paper, docketed "A copy of all the Acts;" which under the head of "Bills of Grace drawn with his Ma^ty's direction" contains the same eight titles, with only a few verbal variations; together with these following:—

9. An act against the long continuance of Liveries, and unnecessary bringing in of evidence into the Court of Wards.
10. An act against the vexation of his Ma^ty's subjects by the assigning of debts unto the Crown.
11. An act for making the estates of attainted persons liable for the payment of their[1] just and true debts.

Further remembrances by his Ma^ty.
Touching carts taking.
Touching the assert lands.
Touching a liberal pardon,

This completes the first division: the matters contained in which would appear by the title of the next to have all belonged to the heads "that were propounded:" that is, to have been meant to give effect to the propositions of the "Undertakers." Those which follow I take to be propositions emanating from the Government itself.

[1] In MS. "liable unto the Parliament of other."

Bills to be drawn by his Ma^ty's most gracious direction for the general good of the commonwealth, upon other heads besides those that were propounded.

1. An act against extortion, and for declaring the just and ancient fees of Courts.
2. An act for the limitation of [the] number of attorneys in the King's Courts.
3. An act against the receivers and maintainers of pirates.
4. An act for the repressing of duels and challenges and the trial of such duels as shall be performed beyond the seas.
5. An act against the bringing in and disposing of seditious books concerning the Pope's authority.

In the margin opposite these last five titles is written "Civil Policy." The next four, though marked as a separate class by the recommencement of the numbers, are not included under any general description.

1. An act against (qu. for ?) the restraint of building in or near London, and against inmates and dividing of tenements.
2. An act against the intolerable waste and consumption of gold and silver in unnecessary vanities.
3. An act for the breeding and preserving of timber and woods.
4. An act for the supply of the laws concerning depopulation and tillage.

Memorial of secret bills.[1]

1. An act for the naturalizing of the Count Palatine and issues between him and the Lady Elizabeth.
2. An act for the better administration of justice and for the declaration and limitation of the jurisdiction of Courts.
3. An act for the beautifying and better government of the city of London, and the suburbs of the same.
4. An act for the suppressing and supply of Boroughs of Parliament according to the present state of the towns of this realm.
5. An act for the better proceeding in the plantation of Ireland.
6. An act for the increase of the wealth of this realm by fishing with busses.
7. An act for a more perfect constitution for the uttering of cloths dressed and undressed.
8. An act for the declaration and conformation of the reasonable liberties of corporations.
9. An act against usury.
10. An act concerning a more certain order in granting letters of administration.

[1] By 'secret' bills I suppose to be meant measures under consideration of the Council, which it was not thought expedient to divulge; that so they might be brought forward or kept back according to the turns and exigencies of the time.

Other Bills to be propounded, not yet consulted upon.

1. An act for the moderating of excessive prices of victuals and other commodities.
2. An act for the better policy and government of strangers inhabiting.
3. An act against deceit in weights and measures.
4. An act for the suppressing of certain liberties and exempted places.
5. An act for the better plantation of Virginia and supply thereof.
6. An act to limit the fees of Serjeants, Counsellors at Law, and their clerks.
7. An act to take away the clause of the statute that doth restrain the bringing in of barrelled fish, whereupon a monopoly is founded having a *non obstante*.
8. An act to give the fourth part of the penalties of alehouses and innholders to those that will inform.
9. An act [that] there may be burgesses and knights for the County Palatine of Durham.
10. An act to make a haven at Astworth in the County of Devon.
11. An act to punish abuses upon the Sabbath day.
12. An act for the naturalising of the two daughters of Sir Horatio Vere.
13. An act for the naturalising of Elizabeth Meere.
14. An act to confirm a decree made in Chancery to confirm the inheritance of Sir Thomas Windham, knt., against a grant made to the late Q. Elizabeth and Burtram.
15. An act to restrain Brewers and Alehouse keepers to be justices within any corporation.
16. An act to confirm a decree of customs made between Henry Jernegam and his farmers.
17. An act to enable Sir William Sandes to make his wife an annuity of the manor of Motford against the Lord Sandes and against the heir of the said William Sandes.
18. An act for the selling of certain lands of Sir William Forth in Suff.
19. An act to reform abuses in making brick and tyle.
20. An act for the preserving of the records of the sessions of the Peace.
21. An act to reform deceit in dyeing silk.
22. An act to enable Sir Warwick Heale to make leases of his lands for three lives.
23. An act for the establishing of the hospital appointed by the will of the Earl of Dorset.
24. An act to enable Dame Jane Skinner to have her dower of Castle Camps and other manors.
25. An act to enable William Fletcher of Fleethall in Sussex to sell certain lands.
26. An act to reverse a decree in Chancery for Sir Rowland Lacye.
27. An act to avoid fees exacted by Customers, Controllers, their clerks

and other officers, and that merchants may pass away their goods after the custom compounded for.

[28.] An act for to limit a time for the begining of suits.

Those readers who have accompanied me thus far will recognize in the above list many measures with the names of which they are familiar, either as suggested by the petition of grievances, or as forming part of the "retribution" offered in the Great Contract, or as brought forward independently by Bacon himself in Parliament or otherwise, in the interest of the Commonwealth: measures for the removal or mitigation of the various inconveniences and vexations arising out of the old feudal tenures; measures for the suppression of practices injurious to society, such as piracy and duelling; measures for the protection and encouragement of trade and commerce, according to the political economy of that day; measures for the better and cheaper administration of justice, for the furtherance of colonization, for the suppression of abuses in various kinds, and for enforcing by statute-law injunctions or prohibitions, believed to be salutary, but for which admonitions by Royal Proclamation were not only ineffectual, for want of penalties that could be legally enforced in case of disobedience, but mischievous, because of the jealousy which they excited and the pretensions which they seemed to imply. And if we may take the titles (being all we have) as indicating the policy and intentions of the government, it is impossible, I think, to look through the list without feeling that, however the want of money may have been the immediate occasion of calling this Parliament, it was not the less called for the dispatch of divers weighty affairs affecting the great interests of the kingdom; and that if the Parliament could have met the government in a corresponding spirit, the result might have been a session memorable to after times for the number of good laws enacted in it.

There were rocks in the way, however, which it required discreet steering to avoid. On the subject of Impositions, the King, in his answer to the petition of the Commons on the 10th of July, 1610, though he had conceded a great deal, had not conceded enough to satisfy them. The scantiness of the supply which they then consented to vote was ascribed especially to their resentment of his resolution to maintain the existing impositions as last arranged by Salisbury, even though accompanied with a promise to impose no more;—a resolution which he had since reiterated.[1] Now I do not find that anything had occurred since 1610 to make that controversy easier of settlement. For I cannot think that a proposition which

[1] See Vol. IV. pp. 206 and 231.

seems to have been urged by Sir Henry Neville would have answered the purpose; namely, that a grant should be made to the King for his life by Parliament of the existing impositions: since it was recommended on the very ground that it would make no substantial difference in either of the points which were most stood upon; either the constitutional question of the right to impose, which was a matter of immense importance for the future, or in the actual pressure of the tax, which was the immediate grievance.[1] So that if they were not satisfied with the King's offer in 1610 to "assent to an act by which his power should be suspended from imposing any more upon merchandises without consent of Parliament,[2] it is difficult to conceive why they should have been better satisfied now with the arrangement proposed by Neville. With regard again to the Ecclesiastical Grievances, which were left very much as they were, I do not find that anything had happened either to make the people forget them or to reconcile the King to their removal. Nor does it appear that the "Undertakers" had any measure on this head to recommend. For though Mr. Gardiner has "little doubt that if Neville had been called on to speak plainly, he would have pointed to the ecclesiastical grievances as those which it was most necessary to redress;"[3]—yet as he was not restricted to the answering of questions asked, but delivering himself of a piece of free and voluntary advice, and professing to offer as complete a collection as he could of the "things which had been by several men desired to be obtained of his Majesty for the good of his people;" and as he made no mention whatever of Ecclesiastical Grievances either in the memorial or the collection which accompanied it;—if we may not infer that they were not the grievances which seemed to him to stand most in need of redress, we must at least conclude that he had no practical measure of redress to suggest.

With combustibles of this kind lying so near the surface, and so ready to take fire, a safe passage could only be secured by more discreet behaviour on both sides than in their present temper could well be expected from either. But the experiment was to be made.

5.

The writs were out before the end of February: and during March all England was busy with the election of knights and burgesses for

[1] See a paper in Sir H. Neville's hand, entitled "Reasons to prove that the course propounded doth no way prejudice his Majesty's right or claim of imposing, nor abridge his profit." Cott. MSS. Tit. F. iv. fo. 344.

[2] Vol. IV. p. 204. [3] Hist. of England, vol. ii. p. 139.

a parliamentary campaign in which questions were to be dealt with that were interesting to everybody. Bacon, we have seen, though far from thinking that such a business ought to be left to chance, without any care taken to promote the election of the better sort of candidates or hinder that of the worse, had nevertheless warned the King against "brigues and canvasses,"—which, he said, "would but increase animosities and oppositions," and would also destroy the moral value of success—"making whatever should be done to be in evil conceit with the people in general afterwards." But when such eager passions and such strong personal interests were enlisted on both sides, it was impossible to prevent zeal from overflowing. There was a great deal of canvassing, and the effect of it upon popular opinion was exactly what Bacon anticipated, and showed itself immediately. As early as the 3rd of March we find Chamberlain reporting to Carleton,—"Here is much justling for places in Parliament, and letters fly from great persons extraordinarily: wherein methinks they do the King no great service, seeing the world is apt to censure it as a kind of packing." It is true that the interference was not generally successful. "Letters and countenance" (he writes again on the 17th) "prove not so powerful as was imagined, even in the meaner boroughs." But that did not mend the case. If they were ineffectual, it was because the adverse party was too strong. Where they failed to overcome opposition, they would exasperate and strengthen it. And the result of the election was the return of a House of Commons in which two-thirds of the members had never been in Parliament before;—heavy odds against order and regularity, and that conformity to ancient usage by which alone any numerous popular assembly can be preserved from mere distraction and confusion.

In the meantime the near approach of the day fixed for the meeting of the new Parliament had at length forced the King to choose a secretary of state; it being absolutely necessary that the Government should be represented in the House by somebody who was in a position to lead. And very unlucky he was, either in having no one to choose who knew the House of Commons, or in not choosing such a one from those he had. To commit a new team to a driver to whom whip and reins are new is the way to be upset. To commit the management of the King's business in a new House of Commons, elected under circumstances so novel and so critical, to a man who had never seen the inside of any House of Commons and was almost a stranger to England, having spent his life in employments abroad, was the way to have the King's business miscarry. And yet such a person was Sir Ralph Winwood:—a man of good character, good

abilities, and considerable experience; who had done valuable service as minister in France and in Holland; but whose experience was not English, whose manners were rough and ungracious, and who was so new to Parliament that (as was observed at the time) "the first person he heard speak in that place was himself."[1] He had returned to England in September, upon hope of the vacant secretaryship, and so had had the benefit of half a year's study of the state of opinion in the country: on the 26th of March he was sworn in: and on the 5th of April he had to take his place in the House of Commons, as principal minister of the Crown.

6.

What with undertakers in Parliament, what with electioneering in the country, what with a House of Commons containing so many who had had no experience in its forms and orders of proceeding, what with a leader who had had no experience of the nature and temper of the House,—Bacon must have begun, before March was out, to feel anxious about the issue. Nor could he have felt quite easy as to the manner in which the King would get through his own part; which though very fit for him to learn, was not one for which nature had accomplished him. To assume an air of personal indifference to matters about which he was in fact extremely and reasonably anxious, was not an easy task for one of the most unaffected men, I do not say that ever reigned, but that ever lived. But it was what he had to try to do. Since Salisbury's death he had been his own prime minister. His manner of dealing with his new Parliament was to show what the effect had been of looking into his affairs himself, and what his own nature was, when seen without any interposing medium. He was to "proceed with his Parliament in a more familiar and yet a more princely manner." Unfortunately (though it was a misfortune connected with some of his best qualities), he did not know how to be princely where he was familiar, nor to be familiar where he was princely. As a man, he had no reserve; as an official, he had no condescension. To assist him in his task, Bacon drew up (whether by direction or as a voluntary offering, I do not know) a sketch of the speech which he wished him to make to the two houses when they met; for a copy of which, with permission to include it in this collection, I am indebted to Mr. David Laing, the possessor of the original manuscript. Taken in connexion with the memorials of advice printed in the last chapter, and with another of the same kind which I shall print a little further on, it will be

[1] Chamberlain to Carleton, 7 April 1614.

found to be a very valuable paper; both as showing *how* Bacon proposed to unite the princely and the familiar in the King's demeanour to his Parliament, and as filling up the outlines of his former advice in several particulars. For I take it that the things which he would have had the King encourage the people to expect from him, were the things to which he wished him to commit himself. To some courses indeed he was already committed, not by Bacon's advice but against it, and these had to be accepted and made the best of. The policy of opening the session with an ostentatious offer of popular concessions under the title of "Bills of Grace," by way of inviting a corresponding liberality from the Lower House, was the policy of the "undertakers," and would not have been recommended by him: but being resolved on, it had to be dealt with and the best colour put upon it. The negotiations with the "undertakers" themselves were also (as we have seen) impolitic in his opinion; and the rumour of them had already done mischief; insomuch that he thought it necessary for the King to take notice of it in his speech, and endeavour to allay the discontent which it had excited, by disclaiming all reliance upon the service of particular persons in the House. These were difficulties which he would not have had to deal with, if the King had acted from the beginning by his advice. But in the main I think we may take this memorial as expressing his idea not only of the tone and manner which the King should assume in addressing his Parliament, but of the policy which he should make up his mind to pursue.

An ostensible *occasion* for calling a Parliament at this time—an occasion unconnected with the money question, and upon which no difference of opinion could arise—was conveniently supplied by the birth of the King's grandson; upon which some congratulatory demonstration from the two Houses was a thing natural and politic, and agreeable to the feelings of the nation. A glance at the political state of Europe (naturally suggested by the political considerations connected with the marriage of which the new-born child was the issue) would introduce the subject of supply of treasure, not with reference to the King's personal debts and difficulties, but as a condition without which England could not be expected either to hold her own among the other Powers in case of disturbance, or to pursue at home a policy as liberal as might otherwise be preferred. Thence it would follow, by a natural consequence, to speak of the abortive proceeding of the last Parliament, to disavow the policy out of which it grew, and explain the difference of the course which (now that he had looked into the matter with his own eyes, and was acting on his own judgment) he meant to pursue with this. And in con-

nexion again with this would follow, by a transition equally natural, some intimation both of what he hoped from them now, and what they might expect from him, whenever his affairs should be so settled as to let him act as he would. Under which head an announcement of his determination, with or without their help, to set his finances straight at once, and then to make a thorough reform in his financial administration,—and especially to keep always apart from the rest and sacred to its proper uses, whatever provision was required for the public services,—would doubtless be received with great satisfaction and would silently remove out of the way the most reasonable objection to liberality in subsidies; namely, that they were not always applied to the purposes for which they were granted.

According to this scheme, whatever it was expedient to communicate to the Parliament, either in the way of information or admonition or warning or promise, could be conveyed quite naturally and decorously, without either begging or expostulating or rebuking or threatening. And though it was not to be supposed that the King wanted anybody to show him how to make a speech, it might help him to conceive the situation; and if he took in the idea, he might work it out in his own way with very good effect. How far he succeeded, it is not easy to say; for in a matter which turns upon the judicious management of words, the best reports of his speech which I have seen are not full enough or accurate enough to judge by. That he had Bacon's advice in his mind, and was trying to act upon it, is evident all through. But I gather that he did not play very well a part for which he had no great fancy. "On Saturday, in the afternoon" (says Chamberlain), "the King made a speech to the whole assembly in the Great Banqueting-Chamber, wherein he laid out his wants, and descended as it were to entreating to be relieved, and that they would show their good affection towards him in such sort, that this Parliament might be called 'the Parliament of Love.' In which kind, to begin and train them in the way, he offered them certain graces and favours, not in the way of merchandising (which course he will not allow, nor cannot abide to hear of) but of mere goodwill and *motu proprio*."[1] From this it would seem that he had shown a good deal too much of the seamy side of his meditations, and had not been altogether successful in producing the impression which Bacon wanted. The paper which follows is to be regarded therefore rather as the completion of Bacon's advice as to the course which the King ought to hold with his Parliament, than as the commencement of the history of the session.

[1] Chamberlain to Carleton, 14 April 1614.

MEMORIAL OF SOME POINTS WHICH MAY BE TOUCHED IN HIS MAJESTY'S SPEECH TO BOTH HOUSES.

The words of the writ contain direction.

That his Ma. conceiveth they come up with minds to perform the contents of the writ whereby they are summoned; which calleth, not to bargain, nor to declaim, or to make long and eloquent orations, but to give counsel and consent in the hard and important causes of the Kingdom. And therefore that it were but to wrong and disparage themselves if from counsellors they should turn merchants or scholars. But of this his M. will speak no more; for that he is resolved this Parliament to trust his subjects and to leave them to their own good affections; and that what he hath now to say shall be not so much to frame them and work with them, as to express himself: that he hath formerly given them mirrors of himself, and those true and clear as they proceeded from him; but that still there was some interposition, which is now removed.

His M. will not prescribe to them, but express himself.

His M. former mirrors had interposition.

That his Ma. will use this division for their better memory.

1. Causes of calling this Parliament.
2. The manner of proceeding.
3. Certain resolutions of his M.

First to let them know the causes of the calling of this Parliament.

Secondly to declare the manner of the proceeding which his M. meaneth to hold this Parliament.

And lastly to acquaint them with certain of his intentions and resolutions, which though they do not properly and only concern the Parliament business, yet they may have some pertinent relation thereanent.

Three regards in calling this Parliament.
1. To his M's family.
2. To the Crown.
3. To the People.

That his Majesty in calling this Parliament hath cast an eye of regard, To his house and family; To his Crown; and to his people.

CONCERNING HIS M'S OWN HOUSE. In his M's house God hath taken and given since the last Parliament.

That for his own house his M. must acknowledge that since the last meeting God hath mingled his cup with sorrow and joy; so as his M. may say (but inverting the order) *Dominus abstulit*: *Dominus dedit*. *Sit nomen Domini* etc: it having pleased God (howsoever he hath taken his first fruits) yet still to maintain the number of his M's

posterity as it was, and the masculine number of his posterity as it was, and also to add a descent in making him a grandfather. And therefore his M. is desirous upon an occasion of so great comfort to receive a public demonstration and testimony from his Parliament of their participation therein, by an Act of Naturalisation of the Co. Palatine, his son-in-law, and the issues of the Lady Elizabeth his daughter: wherein as for the Co. Palatine his M. will boldly say that they never made so noble an Englishman (they may have bred as noble in the person of their Kings, but they never made one so noble by Act of Naturalisation) he being extracted from the imperial race of Emperors, and the royal race of the house of Bourbon that now reigneth in France. And as for the issues of his daughter, his Ma. understands himself right well, that there is *Luminare Majus* and *Luminare Minus* in this case. For as for the Crown (whereof he hopeth they see the heir before their eyes, the Prince Charles, his son) if it should fall to his daughter's issues, it needs no help of Parliament, but is as the Sun that hath light originally from itself; otherwise than that they may make an Act of Declaration of it, as they do in the Acts of Recognition. But for other inheritances and abilities, which may concern her issues to whom the Crown shall not fall, that is as the Moon, that borroweth light, and requireth help from the King and Parliament, wherein his Ma. knoweth they will most readily and joyfully concur. And so much for that which concerneth his own house.

Act of Naturalization of the Co. Pal. etc.

The difference, between the Crown and other things.

For that which concerneth his crown and state, it is not unknown neither to his privy Council in respect of his directions, nor to foreign princes in respect of the despatches, nor to his subjects in general by means of the vacancy of some principal places, that for these last two years his M. hath been content to undergo the principal travel and manage of his affairs in his own person; and therefore he is not now without a survey both of his own kingdoms and of the state of Europe at this time: (if his officers had made as good surveys of his lands as himself hath done of his estate, he should have lost less in his sales than he

Concerning his Ma^ties Crown and State.

His M. since the last Parliament hath managed his business more in person.

hath done). That not entering into particulars, which are *Arcana Imperii,* and not to be divulged, his Ma. may truly affirm that there hath been many times of war in this nation, wherein there hath not been, in true reason of estate, so great cause of supplying the King with treasure as there is now in this time of peace. For wars have been often made upon glory, and were such as mought be proceeded in or given over at pleasure. But this state is at this time environed with many occasions which may surprise them if there be not provision of treasure *in omnem eventum:* That besides the peril of the estate in case of wars and troubles, they may think what a prejudice it is to the Crown and kingdom for his M. to be known to have his coffers empty and to be indebted; for that there can be no negotiation nor treaty, be it of marriage, commerce, failer of justice in foreigners, or whatsoever, but it maketh the foreigner to stand upon proud terms, and to presume to work his own conditions. Nay it emboldeneth the foreigner not only to treat *a cavallo,* but actually to encroach and affront the state, thinking it impuissant to resent of injuries. And lastly his Majesty shall have a true trial of the loving affections of his subjects, if they shall deal kindly and worthily with him in freeing and settling both his mind and his estate at once, whereby he may the better exercise not only the political part of his office in that which concerneth the public, but even the very *economic,* by setting himself out of interest, making provisions before hand, taking things at just prices, and the like, which yet hitherto he hath never been able to do. That therefore this matter of supply of Treasure was the second cause of calling this Parliament and upon the grounds before remembered. For to speak to his Parliament in the language of an Accountant by setting forth the particulars of his debts, charge and revenue, or in the language of a Merchant by crying of his royalties to sale, or in the language of a Tyrant by telling them that he most set upon the tenters his laws and prerogatives, if they will not supply him,—they were courses that were never his own; his Ma. being rather willing to rest upon their affections than to conclude them by necessities: And so much for that that concerneth the Crown.

More reason of supply of treasure in the nature of this time of peace than in many times of war.

His M. may be pleased to consider in this place whether he will not express some particulars, as the state of Ireland etc.

Empty coffers extreme prejudice to this state in all treaties and proceeding with foreigners, though in time of peace.

His M. without treasure is not only disabled in the politic part but in the economic.

His M. will not speak to them in the language of an Accountant, nor of a Merchant, nor of a Tyrant.

For that which concerneth his M.'s people, that his M. (to speak plainly) was willing to call a Parliament to the end that both he mought know his subjects better and his subjects likewise mought know him better than it seemeth that the last Parliament they did. At which time his Ma. conceiveth there was much misunderstanding. For by labouring and breaking off in things inconvenient or impossible, it could not be discerned what measure of kindness and good affection on either part would have been used in things convenient and possible. But that now his Ma. for his part is resolved not to entertain his people with curious tales and vain hopes, but to prevent words with deeds and petitions with grants: wherein his Ma. for their comfort doth let them know that he intendeth to send down upon them (as the Scripture sayeth) both the first and the later rain: for he will send them down in the end of the Parliament a bountiful pardon, and at the first entrance hath given order to possess them with such Bills of Grace and relief as cannot be matched in example in the time of any his progenitors, and will descend as a new birth-right and advancement to all their posterity. For as Bishop Gardiner was wont to say that he meant to be Bishop an hundreth years after his death, meaning it by the long leases which he had made; so his Ma. in a contrary sense would be glad it should be said that King James were King many years after his decease in the benefits and grants and good laws which he made for the good of his subjects. And if any man thinketh that his Ma. doth this chiefly to draw on a large gift from his subjects at this time when he needeth them, his M. will say this one word and desireth it may be remembered; that when his Ma. shall find his state recovered, which with the good help of his subjects he hath vowed seriously and instantly to go thorough with, they shall find his Ma. more ready then than now to confer upon them other things which now it were not seasonable to think of; so that they may conclude that the state that his Ma. standeth in now doth put back his bounty, and not draw it on. And so much for the causes of the calling of this Parliament.

Concerning his M.'s people.

The last Parliament by travailing in impossibilities and vain hopes, no judgment could be made of the affections either of K. or people.

That his M. this Parliament will prevent words with deeds.

Promise of a liberal pardon, and of gracious bills.

This may have a tacit reference to give hope of somewhat to be done concerning the Impositions.

The points of difference in the proceedings of this Parliament and the last.

For the course that his Ma. purposeth to be holden in this Parliament, That his Ma. will distinctly lay forth unto them in what points the proceedings of this Parliament will differ from the proceedings in the last Parliament.

No merchandising this Parliament.

The first is that in the last Parliament his Ma. took upon him the person of a merchant, and they took upon them the persons of purchasers or contractors. But that in this Parliament his Ma. will hold himself to the person of a gracious King and leave them to the persons of loving and kind subjects. That in bargains the manner is for either part to hold hard for themselves; but in kindness the true proceeding is for either part chiefly to take care of the other. *Charitas non quærit quæ sua sunt.* The King to take care of his subjects, and the subjects to take care of their King. And this in short his Ma. hopeth will be the frame and constitution of this Parliament.

Grievances or graces to be drawn into Bills according to the ancient custom of Parliament.

The second is that whatsoever shall proceed by way of grace from his Majesty, or by way of grievance or petition from them, that it be according to ancient custom of Parliament put into several bills; for that is the way to avoid misunderstanding, to save time, and to produce a real effect. And if there be anything of a tender touch, wherein it is fit that first leave be obtained of his Ma. before it be offered by way of Bill, his Ma. will be graciously pleased at all times to vouchsafe the free access upon such a particular; for as for this compiling of grievances in a miscellany collection it breedeth much rumour and little effect; for while one grievance stayeth for another all is arrested till the end of the Parliament, whereas divers of them mought have been put in way of remedy in the mean time.

The third is that his M. is graciously pleased that those things which concern the interchange of free gifts and graces between his Ma. and his people may chiefly be handled in the Lower House whom it principally concerneth; and not drawn into tedious conferences with the Lords more than the occasions emergent may require. That his M. is well assured that there is none now in the Upper House that seeketh his own glory, or to draw the eyes of both houses upon him; but that my Lords will be most willing to give their God's blessing upon his Ma.'s bounty

Tedious conferences with the Lds to be spared except the occasion be special.

and the alacrity of his Commons, and busy themselves in the mean time in such Bills of Honour and Policy as may concern the ornament safety and strength of the Commonwealth.

And lastly his Ma. hopeth that the clock being thus set, as the last session of Parliament began early and brake up late, so this session of Parliament that began late shall end betimes, and end in a mutual desire to meet speedily again.

This Parliament to be short and to part in desire to meet again.

Now it resteth that his M. do let them understand certain of his princely resolutions, wherein he will be constant and invariable.

HIS M. RESOLUTIONS AND INTENTIONS.

Whereof the first is, That as he will not, for all the treasure in the world, quit any point of his just power of sovereignty and monarchy, but leave them (as they are) sacred and inviolate to his posterity, so on the other side it shall not be with his Ma. as it is commonly with Kings, by continuance of reign still to gather and rise upon their subjects in points of Prerogative, but they shall find him more moderate the last day than the first; so that their condition may be amended and shall be sure not to be impaired.

He will quit no part of his just power, neither will he by continuance of reign still rise and gather upon the subject.

Another is that his M. hath fully resolved and vowed to free his estate at once, and not to endure any longer the afflictions or temptations of a King in want. That there be but two means to do it, the one out of his own means and the other by the help of his subjects. That for the former his Ma. seeth thorough it and knoweth his way; and hath set it down to himself; But then it must be with some diminution of the patrimony of his posterity and perhaps with the withholding of some favours and eases which pass daily from the Crown to his people. But his Ma. is confident upon their loves and affections, that he shall not be driven to that course: And that this he will assure them, that whatsoever they shall give by way of help, there was never gift that should be more rightly bestowed according to the mind and intent of the giver than this shall be; for that his Ma. hath set down to himself so to distinguish his receipts, as there shall never be thereafter any more arrears, but always competent store for that which

His Ma. will free his state at once either out of his own means or by his subjects' help.

His Ma. assureth them their gift shall go to the uses intended.

His Ma. meaneth to set down a course to himself, that there shall be

no more arrears, but competent store for that which concerneth public service.

concerneth public services: amongst which his Ma. doth account the acquitting of his present credit; for that he doth esteem it but half a fortune to have means without credit.

His Ma. giveth hope of payment of privy seals, tacitè.

Another is, That his M. would have them to take no apprehension nor shadow of some vain bruits, as if his M. relied much upon the service in Parliament of a few men.

His Ma. relieth not upon particular men, for service to be done this Parliament, but upon the whole body.

That his Ma. would take it for a derogation not only to their merit, but to his own greatness and majesty, to be beholden to particulars in that which concerneth the body of his kingdom. And that he is not ignorant of the constitution of the lower house, that *he that would be first shall be last;* And therefore that his Ma. is resolved this Parliament not to single out any man for thanks, no nor for blame, except the cause should be very extraordinary, but to take things as proceeding from the kindness and good will of the house in general, as the true representative body of his Commons.

His Ma. in his nature loveth a Parliament.

And the last is, with which his M. will conclude, that he would not have them mistaken in his nature concerning his affection for the holding of Parliaments. For howsoever things may have been represented unto him the last Parliament, to breed a diffidence in him touching his Parliament (the errors and mists whereof his Ma. hath since discovered) yet that his Ma. in his own disposition (as may appear in the kingdom where he was bred) hath ever loved a Parliament, for it is for kings to dislike a Parliament that through stupidness or pride are like images and *statuaes*, and have no fit composition to treat with their people; which is so far from his M. as for his part (were it not for the charge of his subjects, or furder doubt that it should be to draw more money from them) his M. could wish the ancient statutes were put in ure of holding a Parliament every year.

CHAPTER II.

A.D. 1614. APRIL–JUNE. ÆTAT. 54.

1.

THOUGH the government candidates had been defeated in many places, Bacon himself had found no difficulty in obtaining a seat. He had been returned at the same time for St. Alban's, for Ipswich, and (though the fact was not known to Willis) for Cambridge University,[1] to which he had been appointed standing Counsel, and had also made himself agreeable the last Christmas by contributions of venison to the college festivities.[2] The election did not pass without opposition: but it appears to have been directed entirely against the second candidate; whom indeed the Vice-Chancellor pronounced to be ineligible, and refused to return; and whose return was effected at last by a proceeding which seems to have been quite out of order. Whether the opposition was really on political grounds, and what it meant, or whether it meant anything, I cannot clearly make out. What is certain is that the members elected,—Bacon and Sir Miles Sandys,[3]—represented the large majority of votes.

But though he obtained his seat thus easily for three several constituencies in the country, he very narrowly escaped losing it upon an objection unexpectedly taken in the House; an objection of no good omen for the King's business. He had been returned for Cambridge University on the 2nd of April; on the 5th he elected to serve for that place, and took the oaths. On the 8th, question was raised whether, being Attorney-General, he was eligible.[4] Whereupon a Committee was appointed "to search for precedents where any Attorney-General to any King or Queen of this realm hath been chosen and served as a member of this House."[5] By an odd accident it

[1] S. P. Dom. James I. vol. lxxvii, No. 12.

[2] Chamberlain to Carlton, 23 Dec. 1613.

[3] Chamberlain to Carlton, 14 April, 1614. S. P. Dom. vol. 77. No. 7. The Cambridge Register represents Dr. Barnabas Gooch as Bacon's colleague, and says nothing about Sir Miles Sandys.

[4] C. J. p. 456. "Whether Mr. Attorney-General may be chosen (commending his parts, service, etc.) in respect no precedent that an Attorney-General chosen."

[5] Ibid.

turned out that there was no precedent exactly in point. Privy Councillors had constantly been elected and served: King's Serjeants had been elected and served: King's Solicitors had been elected and served: and no objection had ever been taken. Nay the Attorney-General himself had, in the very last Parliament, *served*; but then he had been *elected* before he became Attorney-General; and therefore his case was adjudged to be no precedent. Upon the report of the Committee to this effect, a long debate arose which ended in a resolution very creditable to Bacon personally, but singular as a constitutional decision; namely that for the present Parliament Bacon should be allowed to remain, but that after this Parliament no Attorney-General should serve as a member of the House.[1] The principle therefore that the Attorney-General was *ex officio* ineligible, (grounded of course, or pretended to be grounded, on precedent) was affirmed; but a special exception was made in favour of the occasion and the man.

This I say was a bad omen of the disposition of the House towards the King's business. For it could not be doubted that the absence of any precedent exactly in point was merely an accident; while on the other hand it was not less plain that the course of precedents, rightly interpreted, was *in favour* of the Attorney's serving, and not against it. For upon what principle could he be excluded, that did not apply with equal force to the Solicitor and the rest of the Learned Counsel; and indeed to the Secretary of State and all the Privy Councillors? For they were all of them by their office as much engaged to the Crown as he. Now the precedents were in favour of all these serving. Nay with regard to the Attorney himself, the question had never been raised till the Parliament immediately preceding; and how was it settled then? After being slightly stirred, it was silently dropped, and the Attorney allowed to hold his seat:[2] which certainly seems very like a silent acknowledgment of his *right* to sit. And as for the distinction that was drawn between the two cases,—viz. that the last Attorney had been elected before his appointment, whereas this had been appointed before his election,—as if a member might be Attorney-General but an Attorney-General might not be a member,—there was clearly no sense in that: the in-

[1] C. J. p. 460.

[2] 22 Nov., 1606. "Touching Mr. Attorney, it was much disputed what should be the question. . . . The House upon this grew to division and by division to confusion; for they were not numbered, nor one part well understanding another they settled again, and made a new question: viz. 2. Whether a rule should be made of it: and by voice overruled that no question should be made of it, but the matter should rest; and so was understood and left at that time.

"24 Nov., 1606. Mr. Attorney came in of himself, and continued by connivance without other order." C. J. p. 324.

terfering duties and disturbing influences involved in the office being precisely the same in both. Therefore that they were forced by their precedents and by a fear of innovation to take the exception (however it might be pretended for decency and allowed to pass from politeness) no man could really believe. The truth is that the exception was itself an innovation,—an innovation suggested by a growing jealousy of the influence of the Crown over the deliberations and votes of the Commons; which was the more ominous because nothing had as yet proceeded from the King himself but offers of grace and concession, and assurances of affection and confidence. And though it may seem at first sight that the special exception made in favour of the Attorney on this occasion indicated a more complying disposition towards the King, I am rather inclined to attribute it to a confidential intimation that he had charge of the Bills of Grace,[1] and a fear (for that part of the King's business they were ready enough to advance) that those bills could not be got on so well without him.

2.

But besides the ill omen for the future, there arose out of this one positive and present disadvantage. The question had been raised on Friday the 8th of April, and was settled on Monday the 11th: Bacon being in the meantime sequestered from the House. During the interval the King had made a second speech, in which (following the advice of the "undertakers") he anticipated the demands of the opposition by announcing the favours and graces which he meant to bestow upon them,—not in the way of bargain (he assured them), or as looking for anything in return, but merely out of kindness. To make such a declaration in such a manner that it should produce any good effect, was no easy task for anybody, and particularly difficult for the King, because it was not true, and required great art of words to make it plausible. Something however might have been done by a skilful reporter; and the task of reporting the King's speech to the House should properly have been undertaken by Bacon. In his absence, it was performed by Sir Henry Yelverton, the new solicitor, who did it with unction enough, no doubt; but not (I think) in such a style as to impart to it that air of confidence and serenity and

[1] Note of Sir Roger Owen's speech: "King's privy and learned counsel suffered; for that they have oft made motions for the common state.—That he hath received this morning advertisement from honourable persons, why now special cause he should serve: which not fit to be discovered here publicly, but will privately inform any man that cause (for matter of state this Parliament) he should be this Parliament of the House," etc. (C. J. p. 459.)—Crew's speech: "For conveniency, the Bills of Grace drawn by the King's Counsel; his presence therefore necessary." (Ibid. p. 460.)

simple munificence without regard to consequences, which was requisite (after what had passed before) to redeem it from the character of an offer in a bargain. In such a matter much would depend upon the spirit in which the message was delivered, and as Bacon knew best what kind of impression the King wished and meant to make, he would have been best able to give effect to his meaning in reporting it. But the report had to be made on the morning of the 11th of April, and the decision of the House upon his own case was not pronounced till the afternoon of the same day. In substance it consisted of an enumeration of the titles of the eleven bills which stand first in the list given in the last chapter;—"bills to be drawn upon the propositions exhibited to his Majesty"—those which were "to be ready if sued for," as well as those to be offered,—with some explanation of their provisions.

The next day Bacon took his seat again in the house; and must have looked about him with some anxiety to see what weather was coming. The prognostics were not encouraging. After a motion against some monopoly, which was referred to the Committee for petitions, we read in the Journals the following note:—

"*Mr. Middleton:* That the heads of the matters of Grace tend to the gentility, not to cities, boroughs, burgesses or merchants: *offereth a bill concerning Impositions.*"

That could bode no good. What next?

"*Sir Maurice Berkley,*—against Ecclesiastical Courts." Ending with a motion for a Committee to draw a bill; and followed by Wentworth and Hoskins.

It was clear then that the offer of the Bills of Grace had not stopped the mouths of the discontented. But it was a main point of Sir Henry Neville's plan of operations that the question of supply should be "proposed betimes and followed close afterward:" and it seems to have been hoped that if it could be pressed to a resolution while the House was still under the first emotion and before they had time to talk, the enchantment would be strong enough to carry it through. As soon therefore as Hoskins sate down Secretary Winwood got up, and after setting forth the miseries of the State for want of money,—the navy in danger of dissolution; the Cautionary Towns for want of pay like to mutiny; Tyrone, encouraged by the disorders in Ireland, treating with the Pope to come over next summer; troubles in Germany; France and Spain upon the point of uniting by a double marriage; England through her poverty exposed

in all other parts to contempt and scorn;—and comparing the King's offered graces to another Magna Charta; concluded by moving for a cheerful and speedy contribution.

The House of Commons was so new a region to Sir Ralph Winwood, that he did not perhaps know how unusual a course he was taking. A motion for supply in the first week of the session, in a time of peace, was a thing without precedent; and the first two speeches that were made upon it showed how distasteful it was. The sense of the House was evidently against giving any answer at present. The motion, it was thought, came too early, and should be deferred till the Bills of Grace were brought in. Sir Julius Cæsar added further particulars in illustration of the inconveniences of an empty exchequer; but varied the motion by proposing to refer both matters—the King's wants, and his offers of grace—to a Committee and a sub-Committee. Bacon followed, but ended with still a different motion: and as the notes of his speech are in this case full enough to indicate its general tenour, and it is a matter of no small interest in the study both of his character and policy to know how he tried on an occasion so critical to make the best of the business as he had to deal with it,—I once made an attempt to fill up the gaps and construct a report of the substance of his speech. The speech which I constructed will supply as good a commentary as I can offer upon the imperfect record in the Journals, and I give it as I drew it up long ago. That every reader may know how much is of my own composition, I print the original notes at the bottom of the page.[1] But this, or something like this, is what I suppose him to have said.

[1] "Mr. Attorney:—Sithence they pleased to retain him, the best offices he can; if dismissed him, the best wishes he could.—

All pertinent speeches to one of these three ends: 1. Information of the matter: 2. To persuade consent: 3. To trace out the best means to effect the thing propounded.—

Little remaining to him in any of these three kinds. The first already delivered by them to whom properly belongeth.—To consider what hangeth over us, *viz.* danger; what upon us, Want.—

Some times of peace, for defence, a supply of treasure, as well as some times of war; which some time upon a flag of glory or flash of revenge, which may be pursued or left at pleasure. But when a state environed with envious foreigners on the one part, and encroachments on matter of trade on the other side, and religion so much questioned; our peace may flatter us, not secure us.—The state of Europe never so dark.—To look a year before him, trouble the best watchman in Europe.—Provision of arms for travelling in the night, as well as going to war.—What treaty with strangers, for wrongs, but basely on our part, and gloriously of their part, while we in wants? No private man more subject to sheriffs than a state, in want, to surprises.—Treasure as a ballast of a ship.

2. Persuasion here needless and unwise.—A wise man should make a fire; for can let it alone, when burneth well,—The fire of your affection kindled by the King's speech.—The King's graces shine and warm: no need of a little burning-glass. The King hath made such a track in almost all the points of his Prerogative, as the footsteps of King James will ever remain.—Joy to him that this done, when he the procurator of the King's prerogative. The King's Prerogative grow-

SPEECH IN SUPPORT OF A MOTION FOR SUPPLY.

The Attorney-General thanked the House for their favour in allowing him to remain. If they had dismissed him, they should have had his best wishes; since they were pleased to retain him, they should have his best offices.

For the matter before the House, there were but three ends at which a pertinent speech should aim,—to explain how the case stood; to persuade consent; and to trace out the best means of effecting the thing propounded. And after what had been spoken by those before him to each of these points, there remained little for him to add.

For the first, they were to consider the state in which the kingdom stood; what dangers hung over it, and how they were provided to meet them. And let no man think because they were in peace that they were out of danger. It was not the mere being at war or being at peace that made danger imminent or distant, and a supply of treasure for provision against it necessary or unnecessary: it was the much or little, the nearness or remoteness, of the materials out of which dangers are bred. A house of wood was in greater danger every night, than a house of stone when the next street was burning: more things might happen that would set it on fire. In like manner, a state of peace which may be turned into war at another's pleasure, is fuller of real peril to a nation than a state of war which may be exchanged for peace at one's own. A war, for example, which was undertaken as wars sometimes were only for a flag of glory or a flash of revenge, was no great matter, for it might be pursued or it might be left according to convenience. But contrariwise when a state, though not actually at war, was yet surrounded (as they now were) by envious foreigners on one side watching opportunities for hostile attack, by rival neighbours on the other watching advantages to encroach upon trade, having

eth stronger by continuance: not like a bow-string or watch. Contrary here; for more now than at first.—That when his means shall abound he will in grace superabound.

"The means, a Committee; but of the whole House.—

"The King distinguished between laws of bargain, and mutual affection. One holdeth hard; the other passeth over itself, and careth for the other. In a bargain, the last word an advantage; contrary here.—*Dulcis tractus pari jugo.*—The King's business and Commonwealth to go together: as an inception from the King for the one, so to be done in the other.—No particular committee nor subcommittee; but the whole House." C. J. p. 462.

at the same time so plentiful a source of troubles both within and without in differences of religion,—the outward face of peace might flatter them into negligence, but their only real security was to be prepared for war. Let them cast their eyes abroad, and consider the state of the continent; when was the future so dark? He thought it would trouble the best watchman in Europe to look a year before him. Surely if England was not as a man going to war, she was at least as a man travelling in the night; and the one needed arms as well as the other. As long as they were in want, what security could they have either against invasion or against wrongs? As long as they were in want, and known to be so, not a treaty could be made with strangers, but basely on their part and gloriously on the other. For he would tell them that a State without provision of treasure had no more freedom of action than a private man that was in debt; the one being not more subject to sheriffs than the other to surprises. Therefore to say that they needed no supply of treasure now because they were now at peace, was to say that a ship might go to sea without ballast, because the water seemed smooth. They might sail well enough till the wind rose, but the first flaw would upset them.

As for persuading them to consent to that which the safety of the kingdom required, he trusted it was needless. Their affections had been kindled by the King's speech. To move them further would be to stir a fire that burned well already. The King, in offering to part with so many things of his own for the relief of his subjects, had set them an example which it was for them to follow by offering him a supply sufficient to maintain the strength and dignity of the state. And if any man thought that the King was but parting with that which he found it troublesome to keep; as if his prerogative were growing weak with age, and he were willing to give up something in order to strengthen and secure the rest;—he was never more mistaken. For the prerogative (and glad he was, as the procurator and champion thereof, to find it so) was never more sound and vigorous. It was but kept better within its banks, and the banks were thereby made the stronger. His Majesty had made such a track in almost all the points of it, that the footsteps of King James would ever remain. Unlike a bow-string or watch that became weaker with time, the King's prerogative grew

stronger by continuance and was more confirmed and settled now than at first. And if any man, on the other hand, should take alarm at this, as fearing that the balance might go too much on that side,—surely he had no cause for such jealousy; seeing that the graces and benignities of the Crown increased with its strength, and that the King was never so liberal in giving away his own for the good of his people, as now when he had both most occasion and most advantage to keep it for himself; thereby plainly showing that the limit of his beneficence was not in his mind but in his means, and that when his means should abound his grace would superabound.

For the course to be taken, he wished the question of supply to be considered in a committee of the whole house, and to proceed *pari passu* with the Commonwealth Bills. They would thus meet the King's offers in a corresponding spirit. They were now, as the King had told them, not upon a bargain, but upon an interchange of affection; and they should shape their course accordingly. In a bargain, each party works for himself, and the question is ever which shall have the last word. In an interchange of affection, each cares for the other, and the struggle is which shall make the first offer. The King had got the start with his offers of grace; it was for them to follow the example and meet him with an offer of supply.—And so he concluded for no particular committee, nor subcommittee, but a committee of the whole house.

If nothing had occurred to excite the jealousy of the Commons, it is possible that they would have been content to go into Committee upon the question of supply, under the conditions proposed. But the notes of the debate which followed, though far from indicating a disposition to be illiberal in the matter of money, show plainly that the "animosities and opposition" which Bacon had apprehended from the "brigues and canvasses" of which he had heard, were already eager and active. For upon the first mention of the word "undertaker," the whole House opened upon that scent in full cry, and then arose a confusion of tongues, criminating, recriminating, excusing, deprecating, from which one can only gather that the sore was too tender to be touched even with the healing ointment; and which ended in a resolution to defer the particular consideration of the question (with a general understanding however that they were all in favour of a liberal supply) till after Easter—which was still ten

days off. And the next day, instead of going into Committee of supply, they appointed a Committee to consider of a message to the King "to intimate the protestation of the House against undertakers."[1] It is clear therefore that the motion, whoever advised it, was premature, and that the policy of "beginning betimes and following close" was not likely to answer.

3.

The appointment of this Committee, whose deliberations appear to have lasted long, procured a quiet interval in the House; during which the Bill for the naturalization of the Count Palatine was brought in by Bacon and (after an amicable conference with the Lords upon an amendment) read a third time and passed. But though the undertakers were wrong in supposing that they could carry their points if they went fast enough, they were right in apprehending that delay would make difficulties. On Monday, the 18th of April, upon the second reading of "an act concerning taxes and impositions upon merchants," more signs of storm appeared. The notes indicate an animated discussion—animated, though all on one side—and a general disposition (which was the most stormy symptom of all) to have the question of the right of imposing settled before they proceeded with the question of supply. Most of the speakers were amongst the ablest men of the House, and the position they all took was that the question had been settled in the last Parliament, that it was not to be argued any more in the House, only the former arguments to be collected and set forth. The judgment in the Exchequer, though the formal decision of the authorized interpreters of the law, was coolly set aside as "erroneous"—a contrary resolution having passed the last House "by voice";[2] as if a majority of voices in the House of Commons could overrule the judgment of a court of law upon a question of law. A faint protest at the beginning of the debate against the embodying of such an assumption in an act of Parliament,[3] seems to have had no effect but to bring it out with greater emphasis; and the absence of all traces of further contention in behalf either of the authority of the Bench or of the right of the Crown seems to imply that the current of

[1] C. J. p. 464.

[2] "*Mr. Whitlocke:* That the case for the King's imposing without act of Parliament, by voice of the House then ruled: not now therefore to go back." C. J. p. 467.

[3] "*Sir George Moore:* That laid in the Bill, that the former Impositions laid, to be against the law: where a judgment for it directly in the Exchequer, that it stood warranted by law. Moveth that point may be disputed before it be committed." C. J. p. 466.

opinion ran too strong that way to be opposed... Bacon—either because of his peculiar position in the House (as a member on sufferance who being retained only for a special service could not properly take a prominent part in other disputes), or because he had changed his opinion upon the legal question, or because he saw that opposition would only irritate the majority and make them violent—was on this occasion silent. So was Yelverton. And though Sir Henry Montague (who was one of the learned Counsel) said something, it is impossible to make out from the note in what sense he spoke. The second reading passed without any division, and the bill was ordered to be committed to the whole House the next day fortnight: that was *Tuesday*, the 3rd of May. Two days after, they further resolved that "the consideration of his Majesty's supply should not be meddled in till *Thursday* after Easter week, the *fifth* day of May, and then to be treated of;"[1] and so, after some talking about monopolies and elections, the Bills of Grace having (several of them) been read once but not further proceeded with, and no other business done, they parted on the 20th of April, for their fortnight's holiday; with but little chance of meeting again in a better temper, the seeds of trouble and dissension having been sown much more plentifully than those of concord and public spirit.

4.

When they reassembled on the 2nd of May, Bacon greeted them with four Bills of Grace, and did his best no doubt to make them gracious. Of his speech we have only the following notes; from which, however, aided by what we have seen of his sentiments and policy in this matter, we may gather the general purport and intention, though we cannot judge of the style.

Mr. Attorney bringeth in four Bills of Grace . . . Will not commend the Bills.—The King will be no merchant.—He fearful to have the voice of an apprentice to vent the commodities.—When secondly read, will then explain: will attend the Committee, to give reason and receive reason; and to pray in aid, if cause, of the King's general offer of Grace.—That no meat savoury, except the stomach good.—Wisheth no buzzes of[2] undertaking etc. should not make them taste worse these graces.—

That the last Parliament built upon contract: Let not that cause us to despise these Graces.—That the Israelites' fault, in

[1] C. J. p. 469.

[2] "Or" in original.

loathing manna and desiring flesh, where yet manna better for them than the quails.[1]

The four acts following were then brought in, and read a first time.

An act for making the estates of attainted persons liable for the payment of their just and true debts.

An act giving authority to certain Commissioners to review the state of penal laws, to the end that such as are obsolete and snaring may be repealed; and such as are fit to continue and concern one matter, may be reduced respectively into one clear form of law.

An act against secret offices and Inquisitions to be taken on his Majesty's behalf, to the prejudice of his subjects.

An act for admitting of the King's subjects to plead the general issue, and nevertheless to continue their possessions.

This passed quietly. But the next business was the report of the Committee about the undertakers. They had been appointed on the 13th of April, upon the motion of Sir Roger Owen, with instructions "to consider of what course fittest for a message to the King, to intimate the protestation of the House against undertakers, and to let him know, whatsoever shall be done for him shall be merely out of the love of the whole House to him."[2] The report was now brought up by Sir Roger himself, but it would appear from the notes that little to the purpose had been made out. "Undertaking"—in the sense of packing and managing the Lower House for the King—appears to have been universally condemned, but also universally disclaimed. The doctrine in condemnation of it was carried indeed extravagantly far, for it was condemned as being in violation of an order passed in the last Parliament "that no man but the Speaker might go to the King to confer with him about Parliament business"—an order passed just before the dissolution, and the passage of which was one of the immediate causes of the resolution to dissolve[3]—and it was declared "that undertakers, if any, be worse than the Powder-traitors"—apparently because while they were equally guilty of conspiring to "blow up" the House, they were doing it in a more subtle and secret way; for the Powder-traitors "would have blown us up with force." No case seems to have been made out, however, against

[1] C. J. p. 470.

[2] C. J. p. 464.

[3] "It was in this manner that inquiring very curiously of all the circumstances and causes of the last adjournment, and why it was so early done and so few present . . . and I having answered that *it was to prevent the entering of their order that none should hereafter repair to his M. about Parliament matters without leave*, his M. replied" etc. Sir T. Lake to Salisbury, 3 Dec. 1610. Add. MSS. 4160, No. 134.

anybody in particular, and the conclusion was only that "the general fame" was "sufficient cause of a message to clear the House."[1]

But the excitement had now risen too high to be satisfied with a simple protestation. If there were (or if it might be that there were) among them persons engaged in a conspiracy against the House more dangerous than the Gunpowder Plot, it was necessary to ascertain who they were, and to give them the opportunity of clearing themselves, or else to clear the House of them. It was proposed therefore to enlarge the powers of the Committee for that purpose. And it is a remarkable fact that though all the speeches of which any note was taken were against this course, the votes went so strongly in favour of it that it was carried without a division.

In this debate Bacon, being a member of the Committee, took a prominent part, and delivered the following speech, the preservation of which we owe to his own care. It was first printed by Rawley in the 'Resuscitatio,' and I am not aware that any earlier or independent copy is in existence.

A SPEECH DELIVERED BY THE KING'S ATTORNEY, SIR FRANCIS BACON, IN THE LOWER HOUSE, WHEN THE HOUSE WAS IN GREAT HEAT, AND MUCH TROUBLED ABOUT THE UNDERTAKERS; WHICH WERE THOUGHT TO BE SOME ABLE AND FORWARD GENTLEMEN, WHO, TO INGRATIATE THEMSELVES WITH THE KING, WERE SAID TO HAVE UNDERTAKEN THAT THE KING'S BUSINESS SHOULD PASS IN THAT HOUSE AS HIS MAJESTY COULD WISH. IN THE PARLIAMENT 12° JACOBI.

Mr. Speaker,

I have been hitherto silent in this matter of Undertaking, wherein, as I perceive, the House is much enwrapped.

First, because (to be plain with you) I did not well understand what it meant, or what it was; and I do not love to offer at that that I do not thoroughly conceive. That private men should undertake for the commons of England! why, a man mought as well undertake for the four elements. It is a thing so giddy, and so vast, as cannot enter into the brain of a sober man. And specially in a new Parliament; when it was impossible to know who should be of the Parliament: and when all men, that know never so little the constitution of this House, do know it to be so open to reason, as men do not know when they enter into these

[1] C. J. p. 470.

doors what mind themselves will be of, until they hear things argued and debated. Much less can any man make a policy of assurance, what ship shall come safe home into the harbour in these seas. I had heard of Undertakings in several kinds. There were Undertakers for the plantations of Derry and Colerane in Ireland, the better to command and bridle those parts. There were, not long ago, some Undertakers for the north-west passage: and now there are some Undertakers for the project of dyed and dressed cloths. And in short every novelty useth to be strengthened and made good by a kind of undertaking. But for the ancient Parliament of England, which moves in a certain manner and sphere, to be undertaken, it passes my reach to conceive what it should be. Must we be all dyed and dressed, and no pure whites amongst us? Or must there be a new passage found for the King's business by a point of the compass that was never sailed by before? Or must there be some forts built in this House that may command and contain the rest? Mr. Speaker, I know but two forts in this House which the King ever hath; the fort of affection and the fort of reason: the one commands the hearts, and the other commands the heads; and others I know none. I think Æsop was a wise man, that described the nature of the fly that sat upon the spoke of the chariot wheel and said to herself, "What a dust do I raise?" So, for my part, I think that all this dust is raised by light rumours and buzzes, and not upon any solid ground.

The second reason that made me silent was, because this suspicion and rumour of undertaking settles upon no person certain. It is like the birds of Paradise that they have in the Indies, that have no feet; and therefore they never light upon any place, but the wind carries them away: and such a thing do I take this rumour to be.

And lastly, when that the King had in his two several speeches freed us from the main of our fears, in affirming directly that there was no undertaking to him; and that he would have taken it to be no less derogation to his own Majesty than to our merits, to have the acts of his people transferred to particular persons; that did quiet me thus far, that these vapours were not gone up to the head, howsoever they might glow and estuate in the body.

Nevertheless, since I perceive that this cloud still hangs over the House, and that it may do hurt, as well in fame abroad

as in the King's ear, I resolved with myself to do the part of an honest voice in this House, to counsel you what I think to be for the best.

Wherein first, I will speak plainly of the pernicious effects of the accident of this bruit and opinion of Undertaking, towards particulars, towards the House, towards the King, and towards the people.

Secondly, I will tell you in mine opinion what undertaking is tolerable, and how far it may be justified with a good mind; and on the other side, this same ripping up of the question of Undertakers, how far it may proceed from a good mind, and in what kind it may be thought malicious and dangerous.

Thirdly, I will shew you my poor advice, what means there are to put an end to this question of Undertaking; not falling for the present upon a precise opinion, but breaking it, how many ways there be by which you may get out of it, and leaving the choice of them to a debate at the committee.

And lastly, I will advise you how things are to be handled at the committee, to avoid distraction and loss of time.

For the first of these, I can say to you but as the Scripture saith, *Si invicem mordetis, ab invicem consumemini;* if ye fret and gall one another's reputation, the end will be, that every man shall go hence, like coin cried down, of less price than he came hither. If some shall be thought to fawn upon the King's business openly, and others to cross it secretly, some shall be thought practisers that would pluck the cards, and others shall be thought papists that would shuffle the cards: what a misery is this, that we should come together to foul one another, instead of procuring the public good!

And this ends not in particulars, but will make the whole House contemptible. For now I hear men say, that this question of Undertaking is the predominant matter of this House. So that we are now, according to the parable of Jotham, in the case of the trees of the forest, that when question was, Whether the vine should reign over them? that mought not be: and whether the olive should reign over them? that mought not be: but we have accepted the bramble to reign over us. For it seems that the good vine of the King's graces, that is not so much in esteem; and the good oil, whereby we should salve and relieve the wants

of the estate and crown, that is laid aside too: and this bramble of contention and emulation; this Abimelech, which (as was truly said by an understanding gentleman) is a bastard, (for every fame that wants a head, is *filius populi*), this must reign and rule amongst us.

Then for the King, nothing can be more opposite, *ex diametro*, to his ends and hopes than this. For you have heard him profess like a king, and like a gracious king, that he doth not so much respect his present supply, as this demonstration that the people's hearts are more knit to him than before. Now then if the issue shall be this, that whatsoever shall be done for him shall be thought to be done but by a number of persons that shall be laboured and packed; this will rather be a sign of diffidence and alienation, than of a natural benevolence and affection in his people at home; and rather matter of disreputation than of honour abroad. So that, to speak plainly to you, the King were better call for a new pair of cards, than play upon these if they be packed.

And then for the people; it is my manner ever to look as well beyond a Parliament as upon a Parliament; and if they abroad shall think themselves betrayed by those that are their deputies and attorneys here, it is true we may bind them and conclude them, but it will be with such murmur and insatisfaction as I would be loth to see.

These things mought be dissembled, and so things left to bleed inwards; but that is not the way to cure them. And therefore I have searched the sore, in hope that you will endeavour the medicine.

But this to do more throughly, I must proceed to my second part, to tell you clearly and distinctly what is to be set on the right hand, and what on the left in this business.

First, if any man hath done good offices to advise the King to call a Parliament, and to increase the good affection and confidence of his Majesty towards his people; I say that such a person doth rather merit well, than commit any error. Nay further, if any man hath, out of his own good mind, given an opinion touching the minds of the Parliament in general; how it is probable they are like to be found, and that they will have a due feeling of the King's wants, and will not deal drily or illiberally

with him; this man, that doth but think of other men's minds as he finds his own, is not to be blamed. Nay further, if any man hath coupled this with good wishes and propositions, that the King do comfort the hearts of his people, and testify his own love to them, by filing off the harshness of his prerogative, retaining the substance and strength; and to that purpose, like the good householder in the Scripture, that brought forth old store and new, hath revolved the petitions and propositions of the last Parliament, and added new; I say, this man hath sown good seed; and he that shall draw him into envy for it, sows tares. Thus much of the right hand. But on the other side, if any shall mediately or immediately infuse into his Majesty, or to others, that the Parliament is, as Cato said of the Romans, like sheep, that a man were better drive a flock of them than one of them; and however they may be wise men severally, yet in this assembly they are guided by some few, which if they be made and assured, the rest will easily follow: this is a plain robbery of the King of honour, and his subjects of thanks; and it is to make the Parliament vile and servile in the eyes of their sovereign; and I count it no better than a supplanting of the King and kingdom. Again, if a man shall make this impression, that it shall be enough for the King to send us some things of shew that may serve for colours, and let some eloquent tales be told of them, and that will serve *ad faciendum populum*; any such person will find that this House can well skill of false lights, and that it is no wooing tokens, but the true love already planted in the breast of the subjects, that will make them do for the King. And this is my opinion touching those that may have persuaded a Parliament. Take it on the other side, (for I mean in all things to deal plainly,) if any man hath been diffident touching the call of a Parliament, thinking that the best means were first for the King to make his utmost trial to subsist of himself, and his own means; I say an honest and faithful heart mought consent to that opinion; and the event, it seems, doth not greatly discredit it hitherto. Again, if any man shall have been of opinion, that it is not a particular party that can bind the House; nor that it is not shews or colours can please the House; I say, that man, though his speech tend to discouragement, yet it is coupled with providence. But, by your leave, if any man since the Parliament was called, or when it was in speech, shall have laid plots to cross the good

will of the Parliament to the King, by possessing them that a few shall have the thanks, and that they are (as it were) bought and sold, and betrayed; and that that which the King offers them are but baits prepared by particular persons; or have raised rumours that it is a packed Parliament; to the end nothing may be done, but that the Parliament may be dissolved (as gamesters used to call for new cards, when they mistrust a pack): I say, these are engines and devices naught, malign, and seditious.

Now for the remedy, I shall rather break the matter (as I said in the beginning) than advise positively. I know but three ways. Some message of declaration to the King; some entry or protestation amongst ourselves; or some strict and punctual examination. As for the last of these, I assure you I am not against it, if I could tell where to begin, or where to end. For certainly I have often seen it, that things when they are in smother trouble more than when they break out. Smoke blinds the eyes, but when it blazeth forth into flame it gives light to the eyes. But then if you fall to an examination, some person must be charged; some matter must be charged; and the manner of that matter must be likewise charged; for it may be in a good fashion, and it may be in a bad, in as much difference as between black and white: and then how far men will ingenuously confess, how far they will politicly deny, and what we can make and gather upon their confession, and how we shall prove against their denial; it is an endless piece of work, and I doubt that we shall grow weary of it.

For a message to the King, it is the course I like best, so it be carefully and considerately handled: for if we shall represent to the King the nature of this body as it is, without the veils or shadows that have been cast upon it, I think we shall do him honour, and ourselves right.

For anything that is to be done amongst ourselves, I do not see much gained by it, because it goes no farther than ourselves; yet if anything can be wisely conceived to that end, I shall not be against it; but I think the purpose of it is fittest to be, rather that the House conceives that all this is but a misunderstanding, than to take knowledge that there is indeed a just ground, and then to seek by a protestation to give it a remedy. For protestations, and professions, and apologies, I never found them very fortunate; but they rather increase suspicion than clear it.

Why then the last part is, that these things be handled at the committee seriously and temperately; wherein I wish that these four degrees of questions were handled in order.

First, whether we shall do anything at all in it, or pass by it, and let it sleep?

Secondly, whether we shall enter into a particular examination of it?

Thirdly, whether we shall content ourselves with some entry or protestation amongst ourselves?

And fourthly, whether we shall proceed to a message to the King; and what?

Thus I have told you mine opinion. I know it had been more safe and politic to have been silent; but it is perhaps more honest and loving to speak. The old verse is, *Nam nulli tacuisse nocet, nocet est locutum.* But, by your leave, David saith, *Silui a bonis, et dolor meus renovatus est.* When a man speaketh, he may be wounded by others; but if he hold his peace from good things, he wounds himself. So I have done my part, and leave it to you to do that which you shall judge to be the best.

Though this speech was managed with great skill to meet all objections and to touch with a soothing and healing finger every source of irritation or misunderstanding, it failed to dissuade the House from pursuing the investigation. For the conclusion of the debate is thus recorded in the Journals:

"*Ordered*, upon the question, That the former order shall be enlarged, to give power to examine the undertakers; and the Committee to be of the whole House. Upon Wednesday in the afternoon."

The whole House, therefore,—with its majority of three new members for every two old,—was to plunge into the business of examining the Undertakers, and so that sore was likely to be more inflamed than ever. How the matter proceeded we do not exactly know, the records in the Journals being imperfect. But the general result was exactly what Bacon apprehended. Ten days after the day appointed for commencing the examination, we find the heats still raging; aggravated rather than settled or allayed. They had mixed with and irritated almost every debate that took place in the meantime, and had even led to personal quarrels,—nay to manual scuffles in the House,[1]—when at last they were appeased by the voluntary confes-

[1] "Sir Ro. Killigrew and Sir Wm. Herbert both sequestered. Sir Wm. Walter:—The subject of the matter, Undertaking; the manner, heat.—Pulling out of the chair a great offence in a wild country," etc. C. J. p. 483, May 13.

sion of Sir Henry Neville; who, upon the production of the paper of advice of which I spoke in the last volume, came forward with a clear and frank explanation of his own share in the "Undertaking:"[1] which being generally admitted to be unexceptionable, the House was content at length to drop all further dispute on that subject, and go on with the business of the country.

5.

But it was now too late. The inflammation had in the meantime spread on all sides, and so infected all the other businesses in which they were engaged that hardly one of them had now any chance of proceeding smoothly. The most formidable stumbling-block was still the question of Impositions: a stumbling-block not to be avoided, for the question of the *right* could hardly be passed by in silence now without being virtually abandoned. Ever since that brilliant morning's work of Salisbury's, when on the strength of this disputed right he laid new customs upon several hundred articles not taxed before, it had been impossible to let it sleep. And though the compromise offered by the King—namely, consent to an Act of Parliament limiting his power in future—would (so far as I can see) have been an arrangement sufficiently satisfactory, it seems to have been one to which, for some reason, the Commons would not listen. Upon this question (turning as it necessarily did, not upon the point of policy or convenience, but upon the very power of the prerogative), they had resolved to go into Committee on the Tuesday after the Easter recess—the 3rd of May. The proceedings of that day are not recorded; but on the 5th the King sent for them to hear what he had to say on the subject; and, as may be gathered from the allusions to his speech in the debate which immediately followed, —for the speech itself has not been reported,—and as might indeed have been expected, he did not at all mend the matter. Indeed so large a majority of the Commons, including almost all, if not all, the free voices, had now made up their minds on the question, that no one had ventured in the House to express his dissent. They were not likely, therefore, to be converted by a speech from the King, which of course could not be freely answered. The next day they debated the question among themselves, found their unanimity unbroken, and, after some not very orderly dispute as to the manner in which they should proceed, whether by Bill or by Petition or by Conference with the Lords, concluded finally for the last. The

[1] C. J. 14 May, p. 484.

Lords were to be moved to confer, and a Committee was in the meantime appointed to prepare for the Conference.

The day on which this was settled was the day fixed before the Easter recess for considering the question of Supply: which was the next order on the paper. An attempt to give it precedence had been overruled.[1] But as soon as the debate on the Impositions was over, a vigorous effort was made to push it through without further delay. "The second point which they fell to consider," writes the Rev. Thomas Lorkin to Sir T. Puckering on the 28th of May, "was subsidies; wherein such as favoured the King's necessity were very vehement. And whereas, by his Majesty's own method, they were first to provide for the subject's ease before they entered into consideration of the King's relief, these, inverting the order, would have turned the conclusion into a beginning; and were so confident of their own strength, as they called upon Mr. Speaker to have it put to voices. But the grave speeches of Sir Edwin Sandys, Sir Dudley Digges, Sir Thomas Grantham, and some others, quieted that motion, and drew the House to a resolution to do nothing in matters of that nature till they had ordered somewhat for the good of the public."[2] The notes of the debate given in the Journals confirm this report substantially; and show very distinctly that the objection was to the time and not to the thing. Those who spoke strongest against the motion were careful to declare their intention to vote a subsidy when the proper time should come. Sir Edwin Sandys put his opposition expressly on the ground that such a vote ought to be carried without a negative voice; and wished that "every man's demonstration of his purpose to supply his Majesty in due time" might be made known to him. And though the House would not consent to send a formal intimation even of their general intention, it was agreed that "the honourable persons about the Chair might, as voluntary of themselves, inform the King that generally all that had spoken (which were many) had *und voce* agreed in their thoughts and speeches to relieve his Majesty."[3]

In this attempt to get "his Majesty's business" driven through at the very beginning of the session, Bacon does not appear to have taken any part. It was not according to his ideas of true policy; and was noticed by him afterwards as a mistake on the part of the "Undertakers,"—"a stumble at the threshold,"—an unlucky move, which had the effect of betraying the very thing which it was meant to conceal,—their weakness in the House. And certainly the temper of the House, as it may be gathered from the notes of that

[1] C. J. p. 474.
[2] 'Court and Times of James I.,' vol. i. p. 315.
[3] C. J. p. 474.

debate, seemed to justify his opinion that if left to themselves they would not forget their duty in that respect.

6.

But though the ground upon which a present vote of supply was resisted by the more temperate members was its contrariety to the ancient custom of Parliament, and the dishonour it would be to the King if the vote should not pass with general unanimity,—as it clearly would not, if pressed to the question then;—and though there is no reason to doubt the sincerity of their profession that they would vote liberally when the proper time came, yet it is clear enough, from the tone of that day's debates, that when the time did come the chance of unanimity would be small, unless in the meantime they received some better satisfaction concerning the Impositions. And it was this apprehension no doubt which made the Undertakers so anxious to get the supply voted first. For upon the question of Impositions they were themselves on the popular side;[1] they knew that the King was not prepared to make such concessions as they themselves considered satisfactory;[2] and their own credit was very low in the world just now, the Committee of the whole House which had been appointed to examine them having only just begun their work.

That work had not proceeded far before they came upon evidence of unlawful interference in elections. "And amongst others," says Lorkin, "a complaint was brought against Mr. Chancellor of the Duchy, for some menacing letters he wrote to a certain corporation of the Duchy, whereby he deterred them from a free choice, forcing divers (as was pretended) to give their voice in favour of him for whom he wrote."[3] The Chancellor of the Duchy was Sir Thomas Parry. The case was brought before the House on the 9th of May, and pursued in a long and stormy debate on the 10th. The evidence against him appears to have been clear; the opinion against him was at any rate overwhelming; and all that his friends could do was to plead for moderation in censure, upon consideration of his age and former services. On which occasion Bacon made a speech, of which the notes in the Journals, being consecutive enough to be intelligible, must be inserted here.

[1] The member who introduced the Bill concerning Impositions was the same who moved for a "present supply." C. J. pp. 461, 474.
[2] See Neville's paper, Cott. Tit. F. IV. fo. 344.
[3] 'Court and Times of James I.,' vol. i. p. 315.

SPEECH UPON THE CASE OF SIR THOMAS PARRY, CHARGED WITH UNLAWFUL INTERFERENCE IN AN ELECTION.

Mr. Attorney:—Alloweth the carefulness and earnestness of the House in these misbegotten elections: For whosoever entereth not well, sitteth not well. Liketh not stumbling at the threshold. Liketh the House's feeling of their own power, yet proceeding with moderation; speaking sharply, but concluding mercifully.—

Considereth the person: A Counsellor of State, representing the person of the King, as we here the Commons; an Ambassador in France;—Good success in the last treaty in France:—A Counsellor's son of great age.—The House in disposition noble and generous.—We live not in Plato his Commonwealth, but in times wherein abuses have got the upper hand.—The prescription of the Chancellor to have the nomination of one of the burgesses in every of the Duchy towns.—Yet hath been so in his remembrance.—Blanks:[1]—Yet ancient.—*Error temporum.*—A bill to reform all these abuses; whereat he, though not a Committee, yet attended; for attributeth all his fortunes to his means by this House.—Moveth an entry.—

A censure of sequestration.—A great part of greatness to remit.—*Velle, et posse, nobile.*[2]

Sequestration was not a sentence severe enough to satisfy the prevailing party; and the next day they ordered Sir Thomas Parry to be removed from the House, and a new writ to be issued for a new choice.[3] With this however they were content. And though the King, to show his approval of their proceeding, had signified to them his intention to suspend the offender from his place of Privy Councillor, they declined to press for any further punishment, replying that they were satisfied for their own part with what they had themselves inflicted.[4]

7.

This episode therefore, however noisy and exciting, caused no material interruption to what was now the main business in hand,—the preparation for the conference with the Lords concerning Imposi-

[1] Meaning, probably, "the unlawful custom and abuse for the sending up and returning of blanks." See Vol. IV. p. 367.
[2] C. J. p. 478. [3] C. J. p. 480. [4] Ibid. p. 481.

tions. The Committee charged with that work had been proceeding diligently with it all the time. Their first meeting was on the 6th; on the 12th they were ready with their report: which was brought up by Sir Edwin Sandys in a very able and elaborate speech. They had got together all the records; thoroughly examined the subject; were more sensible than ever of the magnitude of the grievance; more confident than ever that the Crown had no legal right to levy Impositions without consent of Parliament. They conceived that the King had been misinformed; and proposed, as the true way of disabusing him, first to induce the Upper House to join in a petition for removal of the burden; then to present the joint petition to the King, together with a remonstrance of their right; "that so, this eased, they might with better judgment and with alacrity proceed to the King's supply, the first end of this Parliament."[1]

This was the end proposed. By way of preparation, the subject was formally laid out in nine divisions; and each division, after the excellent practice of those times, was assigned to a separate speaker or speakers. With the distribution of the argument (which is not wanted for explanation or illustration of anything that comes within the scope of this work) we need not trouble ourselves. The question, of immense importance then, has been long settled beyond the reach of dispute, and taken its place among the curiosities of history. That it was then a question fairly debatable is all we need now bear in mind; and of this there is evidence enough in the fact that six or seven years before it had been decided one way after formal hearing by the authorized interpreters of the law, and was now for the second time decided the opposite way by a House of Commons very strong in lawyers, and almost unanimous. The only part of the distribution which much concerns us is that which was assigned to Bacon. But that is remarkable enough to be worth quoting *in extenso*.

"Nine heads, nine burthens upon several persons.

I. An introduction, briefly declaring the matter in fact and state of the question.—Direction to him in three things, wherein we conceive the King to have by misinformation done other than any of his ancestors.

1. The time: for now by letters patents and in print these impositions set for him and his heirs for ever; which never done before; which strange; because no Proclamation bindeth longer than the King's life; so could not impose but during his own life.

2. Multitude of impositions. Queen Mary—Gascoigne wines and cloths: Queen Eliz. added only one, of sweet wines. From Ed. III. to Queen M. none. In Ed. III. Ed. II. Ed. I., but five in all.—That upon a peti-

[1] C. J. p. 481.

tion last Parliament divers hundreths of these taken away; so now not remaining above 300 or 400; yet that those remaining far more worth than all the rest abolished.

3. The claim: for none of his ancestors ever did so, but pretended wars, needs, etc. Prayed continuance but for a time.—This committed to Mr. Attorney."[1]

Now when we consider the peculiar position in which Bacon stood towards the House and towards this particular question,—holding an office which had but a few weeks before been voted incompatible with the duties of a member of Parliament as binding the holder to the King's side, and having only four years before put himself forward personally as an earnest and uncompromising maintainer of the King's right on grounds of law,—their selection of him for a part like this must be regarded as a remarkable proof of personal confidence. The task of opening and laying the groundwork of an argument[2] which was to make good a conclusion in the teeth of the King's most notorious prejudices, was to be entrusted to the King's attorney-general. The officer whose official relation to the King was thought to imply subservience incompatible with the duties of a member, was to explain to the Lords that the King had in this matter of Impositions assumed powers which none of his progenitors had assumed, both in time, in number, and in circumstance; that whereas no former King had set any Impositions but for a time limited, he had set them "for him and his heirs for ever:" whereas no former King had set more than two or three, he had set more than as many hundreds; whereas no former King had set them but upon pretence of war or need, he had set them when there was no such pretence.

The matter, it is true, was a very delicate one to manage. The successful result of the conference would depend very much upon the temper and spirit in which it was opened, upon the tact and persuasive speech of the opener, and the personal favour with which the audience were prepared to look upon him and listen to him. In all these respects Bacon was no doubt the man for the work. The House knew by often-repeated experience in whose hands such a business had the best chance of prospering. But the same skill which enables a man to guide a cause right which he wishes to succeed will enable him to guide wrong a cause which he wishes to fail. Now they knew that not long ago he had believed them to be wrong in point of law: and whether they were right or wrong, such a peti-

[1] C. J. p. 481.

[2] Sir Francis Bacon, attorney-general, at the conference was to have made the introduction to the business, and to set the state of the question." Whitelocke's 'Liber Famelicus,' p. 42.

tion as they wanted to persuade the Lords to join in was certain to bring them into disagreeable collision with the King; whose most recent declaration on the subject was regarded as discouraging.[1] How was it that they could trust him with such an office? Upon the point of law, indeed, it is possible that he had changed his opinion. When the question first fell under debate, the records (upon the evidence of which the argument chiefly turned) had been imperfectly examined; and one distinguished lawyer who had formerly been a conspicuous speaker on behalf of the King's right to impose, had professed himself a convert upon the sight of precedents which had been disinterred by the Committee appointed to search.[2] Now we happen to know that *shortly after the last Parliament* "certain records concerning Impositions" were delivered to Bacon, and that he made private notes upon some of them.[3] What these records were indeed (further than that their bearing upon the case was thought important), or what the tenour of his notes was (further than that they were private, and that he wished to keep them so), we do not know. But it is possible that they had had upon his opinion the same effect which others had formerly had upon Hackwill's. And if that were so, he was all the better qualified for the task now laid upon him. His own conversion would give additional weight to his authority, and point him out as specially fitted to set forth the reasons for reconsidering a conclusion which he had himself formerly concurred in, but had since discovered to rest on imperfect information. As for collision with the King, it was an evil both for himself and the country which he must have wished extremely to avoid. But he probably felt that it could not be avoided now except by the King's yielding ground; which he would be more likely to do if he saw the House unanimous than if there were symptoms of divided opinions among the leaders. Whether or not he now thought the King's claim good in law, he must have been fully satisfied by this time that it could not be maintained in fact. Right

[1] "Mr. Delliverge, accordant, in respect of the little hope yesterday of relief of Impositions." C. J. 5 May, 1614. "Yesterday" was the day on which the King had spoken to them.

[2] "*Mr. Hackwill*:—Wisheth his tongue might cleave to the roof of his mouth if not speak to this bill: it is of that importance.—That he pitied them that last Parliament began the question.—Confident upon the arguments and judgment in the Exchequer.—That, after he had heard the matter argued and seen the precedents, he converted; so now remaineth, and will do his best to convert his brethren." C. J. p. 467.

[3] "Mr. Attorney generally questioned what records he hath seen.—That he received, shortly after last Parliament, from Mr. Jones, which he took to have been given him, whereupon he hath made private notes.—Wisheth those were transcribed.—The rest ready to redeliver.—And pressed whether he have any other, or have seen any, affirmeth, not." C. J. p. 486. May 14, 1614.

or wrong, the question was clearly carried against the King. To have it carried in such a manner that the collision should not be violent or visible, was the best that could be hoped now. We have seen that he thought the question admitted of "accommodation";[1] and we shall see hereafter in what particular way he thought it might be managed, so as to involve a virtual abandonment of the King's claim and yet to make it seem his own voluntary act, induced by public considerations, and having no reference to the question upon which the difference had arisen. Judging from the general tenour of his policy, I have little doubt that he was preparing at this time to work towards some such end; this being one of those struggles between Prerogative and Privilege in which it was of vital importance to avoid a definite and declared victory on either side.

If so, his readiness to take the part assigned, whatever his private opinion may have been on the point of law, is sufficiently accounted for: he could not have served the King better. And on the other hand, if he was willing to undertake and desirous to succeed in it, his appearance at the head of a Committee of Conference would give them countenance and strength. If the House could trust him, nothing was more natural than that they should employ him. That in a business so delicate and difficult, so distasteful to the higher powers, and so easy to make miscarry, they should have felt they *could* trust him, was to his credit and to theirs. But it is evident they did.

They proceeded warily; and to make more sure of their ground, and prevent the danger of being confounded by the production on the sudden of some new unexpected precedent, they took the precaution, before agreeing upon their message to the Lords, of inviting all dissentients to make known their objections.[2] At the debate in which this motion was made, Bacon was present and spoke. But though he raised some questions and desired further inquiry as to certain of the positions which it was proposed that he should himself maintain, it is clear from the notes of his speech that he did not mean to raise again the question of the King's right, but was willing in a general way to accept the part assigned to him.

NOTES OF SPEECH ON PREPARATION FOR CONFERENCE TOUCHING IMPOSITIONS.

Mr. Attorney:—That their putting this part upon him an argument of their good opinion. Trust in his person discharged

[1] Letter to the King. "Wherein I meet with the objection of Impositions, but yet I conceive it may be accommodate." Vol. IV. p. 372.

[2] "Mr. Thorpe moveth that if any man can speak anything for the King's right of imposing without Parliament, they will do so." C. J. p. 486, May 16.

the suspicion of his place. For the three points, spoken of matters in fact; wisheth that this tried true, e'er propounded: for erring in matter of fact more subject to redargution than matter in law. Moveth whether an indefinite grant of imposing imply not a perpetuity. 2dly. Claims by word and by fact: the latter the stronger. Words the female, acts the male. The number:—That they that speak, of the greater number.

Adviseth a conference between the sub-committees, and a view then to be taken of the records; and every one to be bounded to his part; for hard for him that cometh before not to speak something of that which cometh after; for that it blemisheth the part of him that cometh after, when deflowered by him that precedeth.[1]

This was spoken on the 16th of May. But it was not till the 21st that they were ready to send their message of invitation to the Lords; not till the 26th that they received the answer. So there was much deliberation on both sides.

The answer was a refusal.

"Their Lordships, having entered into a grave and serious consideration as well of the matter itself as of divers incident and necessary circumstances, did not think it convenient to enter into any conference of that cause concerning the point of Impositions at that time."[2]

Such a refusal was a very unusual measure. The Commons, it is true, had within recent memory refused to confer with the Lords about the amount of a subsidy:[3] but that was because they took taxation to be the particular function of the Lower House. No such reason could be pretended by the Lords in this case. In such a question as the legal right of putting impositions upon merchandise, a joint petition from the two Houses was the orderly and constitutional way of proceeding; to which a Conference was a necessary preliminary. In assenting to it they did not bind themselves to assent to the prayer of the proposed petition: in refusing it, they refused not merely to acquiesce in the conclusion, but to entertain the question. The truth, I take it, was that those of the Councillors and courtiers who had been in treaty with the "Undertakers," meaning to use them for their own purposes, or (in the Earl of Suffolk's own phrase) to "play the knave with them," had found that the game was not going in their favour, and resolved to break it up.

[1] C. J. p. 486, May 16, 1614. [2] L. J. p. 708. [3] See Vol. I. p. 216.

And unfortunately the means were ready at hand. Up to this time the absorbing importance of this question of Impositions had occupied the Lower House, and the gravity of the persons who had been trusted with the management of it had kept down all disorderly tendencies. But the elements of disorder were there, and a word or two was enough to put them in commotion. The answer from the Lords found the Commons in a state of excitement unfavourable to judicious resolutions. Rumour with some of her tongues had anticipated the messengers, and reported that words had been spoken during the discussion in derogation of the Lower House. I have already had occasion to remark more than once that the guardians of liberty had not yet learned to tolerate freedom of speech any better than the champions of prerogative. They could demand it for themselves, and strongly resent all interference with the exercise of it on their own side. But the freedom which they demanded was freedom to speak that which they thought good, and forbid to be spoken that which they thought not good. To words calculated to injure a cause which they wished to prosper, they were not prepared to accord any indulgence which they knew how to prevent. In this case the first proceedings of the Lords had been temperate and judicious. Upon the motion of the Lord Chancellor, they had resolved themselves into a Committee of the whole House for the purpose of taking the message of the Commons into consideration;[1] and having first agreed upon the general purport of their answer (which was to be "that they would meet them of the Lower House, and hear what they would deliver unto them"[2]), they had proceeded to consider the question of time and place, which the Commons had left to their choice. It was important that they should go prepared for discussion: and by way of preparation it was moved by the Lord Chancellor and carried upon a division, that before they proceeded to the further consideration of their answer, they should hear the opinions of the Judges ("who had been required and were then present to assist that Court") touching the point of Impositions. The Judges, however, though summoned to be "assistants to the Lords to inform them of the Common Law,"[3] saw objections to the delivery of an opinion upon this question; and speaking by the mouth of Coke, desired "for many weighty and important reasons which his Lordship delivered with great gravity and eloquence" to be forborne; "concluding that himself and his brethren were upon particulars in judicial course to speak and judge between the King's majesty and his people, and likewise between his Highness' subjects; and in no case

[1] 21 May. L. J. p. 705.
[2] Ibid. p. 706.
[3] Coke's Institutes, Part 4. c. i. p. 50.

to be disputants on any side."[1] How they were "to be assistants to the Lords to inform them of the Common Law" if they were never to deliver an opinion upon a question in dispute, is not explained. But the function of the Judges was in a state of transition; and in this case the inconveniences were obvious which an extra-judicial declaration might involve. Their excuse accordingly was allowed, and the Lords had to make preparation for the argument without their help. But the silence of Coke was probably, to those who knew him, significant enough. It told them that in defending the King's right to impose without the consent of Parliament they could not count upon his support, and made them wish to avoid the contest. Now the resolution they had come to in favour of the Conference was only in Committee; and though it was a Committee of the whole House, the House itself was not bound by it. The question "whether they should meet" had to be put again, and, being put, the non-contents carried it.

8.

This was on the 24th of May; and I suppose it was in the course of that day's debate that the words were uttered, the rumour of which was agitating the Lower House when the answer from the Upper was at length delivered. Rumour had said that one of the Bishops had urged the Lords not to consent to the Conference, alleging that the question was one with which the Commons had no right to meddle, that they were striking at the Crown, and would probably utter matter of mutiny and sedition not fit for the Lords to hear.[2] Upon this ensued a long, violent, distracted and disorderly debate[3] as to the steps to be taken for righting the intolerable wrong. Whether to complain to the Lords, or to go at once to the King, or to rise and refuse to sit again till they were satisfied, were the questions which occupied them all day; ending, however, in the moderate resolution to refer the question to a select Committee. The select Committee, by a majority of 21 to 18, recommended that they should go for redress, not to the Lords, but to the King. And it was while Sir Roger Owen was defending this recommendation against the grave and weighty objections urged against it by Sir E. Sandys, that the answer from the Lords arrived. There was nothing in the form of the answer to interfere with the effect of Sandys's argument,

[1] L. J. p. 706. [2] C. J. p. 496, May 25.

[3] See the note of Sir John Savile's speech, towards the end. "The indignation of the House at the first motion; yet every occasion of mirth entertained: wisheth more gravity." Ibid. p. 497.

which seems to have convinced all parties; and the resolution with which the discussion concluded was to send a message on the subject to the Lords and to forbear proceeding in all other business until they had their answer. A select Committee was appointed accordingly to prepare the message; and after some discussion in the House upon the report (in the course of which the assailants of the Bishop's character were only silenced by a suggestion that if they punished him so much in that way, it would be thought punishment enough for the offence), all requisite preparations had been made;—when a fresh interruption was caused by the announcement of a letter received that morning by the Speaker from the King.

It was about their resolution of the day before. He wanted to know what they meant by "forbearance of proceeding in all other business," and whether it belonged to him or to them to put an end to the Session. This raised a new commotion. What did the King know about the terms of their resolution? Who had told him? There must be somebody about the King who misinforms him. Let there be a Committee of the whole House to inquire into the matter, and let everybody be called upon to clear himself. "The King has not been misinformed," said Sir Thomas Lake, assistant-secretary: "he saw the order itself." "The King hath been oft misinformed," said Mr. Bulstrode. "It is certain that there has been misinformation," said Sir Walter Chute, carver of the King's meat. "There were those that were unfriendly to the calling of this Parliament. I doubt they still cast bones in." "I have been a Parliament-man," said Sir Samuel Sandys, "these thirty years; and more bones have been cast in this Parliament to divert the good proceedings of the House, than in all the Parliaments that I have known. If the King saw the order, it must have been because he desired to see it upon some former misinformation." The conclusion of the debate, of the temper of which these are fair samples, was to go into Committee of the whole House the same afternoon, for two purposes; 1st to consider of an answer to the King's letter; and 2ndly to take into consideration all misinformations made to his Majesty.[1]

The first was dealt with first, and passed without difficulty. The form of answer was quickly agreed upon, and the King was ready to receive it. His reply to the deputation which presented it appears from the notes to have been in a very good temper. Approving of their desire to clear themselves of such an imputation as had been cast upon them, he reminded them that other matters more necessary remained to be done: hoped that they would be careful to do

[1] C. J. p. 500.

nothing which might give occasion to such scandals: complimented them upon their diligence in searching out precedents, and only hinted at what might happen if he were to follow the example, and look into the precedents of what Kings had done; finally called their attention to the height of the sun, as admonishing them to take into consideration without further delay the great and important businesses of the King and kingdom.[1]

Unluckily when his reply was reported to the House (which was on the 30th of May) there was no business so important in their eyes as the punishment of the Bishop: concerning which the answer from the Lords came the same morning, and was far from satisfying them. The right of free debate was not indeed insisted on or pretended. The Lords seemed by implication to admit that words spoken in the sense complained of would not have been justifiable. Their Lordships would be very willing, etc., but did not think fit to proceed in such a matter upon mere rumour: desired first to know what the words were wherewith the Bishop was to be charged, and how the same were to be proved. The Bishop himself, in the meantime, alarmed apparently at the uproar which he had excited, spoke privately to the member who had brought the message from the Commons, denying with regard to some of the words imputed to him that he had used them at all, with regard to others that he had used them in the offensive sense that had been put upon them. And it might have been thought that his explanation, being reported to the House immediately after the delivery of the Lords' message, constituted substantially, if not in form, an apology quite as ample as the House could reasonably demand. But no. "The Bishop's private speeches to Sir Edward Hoby," said Sir Wm. Cope, "altereth him nothing. If the Lords will not right us in this, we must take another course. Popish-affected persons hindered the calling of this Parliament, and have ever since thrown in bones amongst us, and kept us in broils." "It must needs be known to the Lords," said Sir James Perrott, "whether he spoke the words or no. If they clear him—" "We must have another Committee," said Mr. Duncombe, "to consider of a course to right ourselves." "Another message to the House of Lords," said Sir Thomas Rowe, "to clear or excuse him of this matter in fact." "An address to the King," said Sir Symeon Steward, "and a committee to consider of the course for it." "A Committee," said Sir Robert Phillippes. "A Committee," said Mr. Fuller and Mr. Alford, "to consider of a new message to the Lords, either to clear him or accuse him." "A committing,"

[1] C. J. p. 501.

said Mr. Mallet, "and a cessation." "A Committee," said Mr. Mervin and Mr. Ashley, "but no cessation." "A message to the Lords first," said Sir Roger Owen: "if this speed not, then go to the King. Lords offending less than this have been sent down here to answer it at this bar." "A message to the Lords," said Sir Maurice Berkeley, "to clear or accuse him." "No Committee," said Sir Jerome Horsey; "satisfaction not to be expected from the Lords: go to the King for relief, that he may examine the Lords and the Bishop." "Not to the King," said Sir Edwin Sandys, "for the reasons given before:[1] send the Lords for accusation the words in writing."

In such a confusion of voices and opinions, there was nothing for it but to refer the question to a committee of a few. And the appointment of "a select committee to consider of a message to the Lords," was the practical outcome of that debate.

It is important to observe here that the question which had now put all others out of their heads was not Impositions, or Supplies, or Grievances, or any of the great causes upon which the Commons were at variance with the Government. If they had purposed to invite the Lords to reconsider their refusal to confer with them upon an important question of State in which it was their duty to take part; or if, acquiescing in that refusal, they had proceeded at once to lay their case before the King; or if any new grievance had turned up, the redress of which might properly have been made a condition of granting supplies; they would have stood upon strong ground, and there is no reason to suppose that what they had to say would not have been duly received and listened to. But all these things were for the time forgotten. The sole question which the Committee had to consider was how to compel the Lords to punish the Bishop for expressing an opinion. It must also be said for the Lords that, far from being unreasonably obstinate in the matter, they were prepared to go in the way of conciliation quite as far as they could be reasonably asked to go, if not further. In reply to the second message from the Commons, which was in effect only a reiteration of the first, they consented—waiving for the occasion their not unreasonable objection to be called to account by the other House for words spoken within their own walls, not entered in their records, not otherwise published, not known at all to the party complaining but by report, which must have been itself a breach of pri-

[1] See C. J. 26 May, p. 498. "That to go immediately to the King wrongeth the liberties of the Upper House . . . If the Lords shall stand upon their liberties and the King shall seek to punish, and this make a division between the Lords and the King, this not to deal with them as we would have them deal with us."

vilege—to entertain the charge, and hear the Bishop's answer to it; and having first received from him in person a passionate disavowal of the meaning imputed, they condescended to inform the Commons that he had made "solemn protestation upon his salvation that he did not speak anything with any evil intention to that House, which he did with all his heart duly respect and highly esteem; expressing with many tears his sorrow that his words were so misconstrued and strained further than ever he meant."

Had this been all, it was much:—more, I should say, than was wanted or than was wise. But it was not all. They were not to leave it doubtful whether they held free criticism of the other House among themselves (when the question was whether they should enter into joint action with it) to be within the limits of legitimate liberty. The passage proceeded thus:

"Which submissive and ingenuous behaving of himself gave satisfaction to their Lordships that howsoever the words might sound, his intention was not as it hath been taken; and their Lordships do assure the Knights, Citizens and Burgesses of the Common House that *if they had conceived the Lord Bishop's words to have been spoken or meant to cast any aspersion of sedition or undutifulness upon that House* (as it seemeth report hath been carried to them), *their Lordships would have proceeded to the censuring and punishing thereof with all severity.*"

In a question of words only, and words spoken in what should have been (as far as the Commons were concerned) private, it might have been thought that this was at least enough. The doubt was whether in offering so ample an apology they were not admitting by implication the liability of one House to account to the other for words spoken in debate; and so establishing a very inconvenient precedent. To prevent this, they took the precaution of adding the following clause:

"Nevertheless, their Lordships think fit to signify, that though they have been careful at this time to give them contentment, for the better expediting of his Majesty's business, and to retain all good correspondence with them, yet their Lordships are of opinion that hereafter no member of their House ought to be called in question, when there is no other ground thereof but public and common fame only."[1]

The wisdom of this proceeding on the part of the Lords may well be questioned: for it is vain to say that the thing which there is reason to do now shall not under similar circumstances be done again; and the reasons against it could hardly be stronger in any

[1] L. J. ii. p. 713.

other case than they were in this. But the *animus* cannot be misunderstood. It is plain that the message was intended to keep the weather fair, and that the majority of the Upper House was not desirous of a breach with the Lower. Neither was the King. His reply to their expostulation upon his last message had been not only meant to be, but found to be, so conciliatory that the further inquiry about misinformers had been silently suffered to drop. Still less can it be supposed that the leaders of the popular party in the Lower House were desirous of a rupture. To the success of *their* game the continuance of the Parliament was indispensable; and they not only knew that, but knew also that they must be prepared to pay for it. They had postponed the vote of supply in order to secure the continuance of the session, and to better their bargain; but they never intended to provoke a premature dissolution by refusing it. Seeing then that neither the King nor the Lords nor the leaders of the popular party in the Commons wished the Parliament to break, it is difficult to understand by whom and by what means the breach was brought about. If the Journals of the Commons had been kept up to the end, we should probably know more about it. But they fail us at the crisis, and we must be content with such information as we can gather from the newsmen of the day. Their reports however will be more intelligible if we first study the temper of the Lower House as shown in their reception of the message from the Lords last quoted. And of this the fragments and snatches of the debate which the reporter succeeded in setting down will give a livelier as well as a fairer idea than any summary that I could construct out of them.

The answer from the Lords had been delivered on the last of May. On the 1st of June a debate took place upon it, of which the following extract from the Journals contains all we know.

"The answer from the Lords read again.

Sir Ro. Owen:—Detesteth all that love not superiority among ministers.—

That the words are not denied, only his intention excused.—Moved much by his tears privately to Sir Edw. Hobby, publicly in the House yesterday.—That yet this moveth him not, as a member of this—

That, upon less occasion, greater Lords than he, sent down to this Bar.—

The Lords message *via lactea*, in the beginning; *via lutea*, in the latter end.—Disliketh their directing us in our proceedings.—

Moveth, a subcommittee of a few, to consider of a fit course to proceed further against the Bishop.

Sir W. Clute adviseth to go immediately to the King, to desire him

not to dissolve the Parliament, till he know our griefs, and we consider his wants.

Sir *Ro. Phillippes* moveth for a Committee, to consider of the slightness of the satisfaction of the Lords' answer, and of the unfitness of their direction for our proceedings; which we neither expect nor respect.

Sir *James Perrott*:—That the Bishop's tears not for sorrow (for acknowledgeth no error) but that—

That the tears of fear and terror, not of repentance.—

To go no more to the Lords.—

That in favour of a recusant, he hath certified under his hand and seal, that he was conformable. That only upon sight of one, directed by him to be there in the King's Chapel, he certified his conformity; which implieth the taking of the oath of allegiance and supremacy; which he never did.

Moveth, Mr. Speaker may give a warrant for seizing that recusant, who was thus—

Moveth to go to the King.

Mr. *Glanvyle*:—Impliedly confessed that the words spoken: The intention denied; which by law not examinable; because no man or devil can try or know the heart of man.

Sir *Mawr. Berkely*:—1. Message to the Lords to let them know we have such grounds for these words.

2. That no proportion between the fault and his punishment.

3. That our proceedings for the King's business—

4. That, by this slight message, they teach us a lesson, we unwilling to learn.—

Doubteth, whether best to go to the King, before we have done something here which may make our message to the King more acceptable.

Mr. *Monperson* moveth, a Committee; and, whether not fit for an order to be entered here, that whensoever the like occasion shall happen concerning the Lords—

Sir *Tho. Rowe*:—That this no answer; for no relative in it to our charge.—Not to go yet to the King.—A select Committee to consider of the course holden between the Lords and us; and an order—2. An order to declare him, in the opinion of the Commons, to be unfit for the King's ear, house, the place he holdeth, or the society of reasonable men.

Sir *Wm. Walter* moveth, a Committee to consider of a course to [go] to the King by a petition; therein to acquaint the King with the passages of this business between the Lords and us.

Mr. *Bulstrode* secondeth Sir *James Perrott's* motion, for sending for the Recusant, etc.

Mr. *Duncombe*:—To have this warrant presently made before the House rise.

Sir *Symeon Steward* moveth consideration of a message to the Lords, to clear our discretion, impeached by their answer. 2. To go to the Lords, and if no redress there, then to resort to our own power.

Mr. *Griffynn*:—That any man that knoweth anything—

Ordered, upon the question, That a warrant shall be made forthwith for such a person, or persons as Sir *James Perrott*, or Mr. *Hackwill*, or any other of this House shall nominate to Mr. Speaker, concerning the matter in question.

Sir *D. Digges*,—to have the House sit this afternoon about this matter.

Ordered upon the question, That a select Committee shall consider what is fit further to be done in this matter touching the Bishop of *Lincoln*.

Then follow the names of the members who were to form this select Committee; and the list is so much better than the temper of the speeches would have led one to expect, (for it includes many of the ablest and gravest members, who had taken no part in the previous debate,—Bacon among the rest), that it would seem at first as if the silent good sense of the House, though failing to influence the speakers, had after all governed the conclusion. The deliberations and report of such a Committee might have done much to lead the House back out of the false and foolish position in which it had placed itself. But unfortunately the selection of the Committee was not the final act. There was still room for an amendment; and an amendment was (it seems) proposed and carried, whereby the intention which dictated the selection was quite frustrated. For immediately following the list of members selected,—twenty names fairly chosen—we find in the Journals this singular addition to the order: "*Any that will come to have voices:* This afternoon, in this House." The "select" Committee therefore was to be nothing less in effect than a Committee of the whole House; the House as it was, in short; only with liberty for every member to speak as often as he pleased.

Now the proceedings of Committees, whether select or of the whole, are never noticed in the Journals, except upon the bringing up of the report. And as in this case no report was made, we have no means of knowing what was done in Committee that afternoon. But if we consider once again what the business committed to it was, and how they were dealing with it, we shall have the less difficulty in understanding what followed.

Up to this time they had postponed the consideration of Supply upon the legitimate ground that commonwealth measures ought to have precedence, and in the avowed expectation that when the proper time came it would pass, as it ought to do, without opposition. Of these commonwealth measures they had put the most important foremost, and were proceeding in a regular and constitutional way towards the settlement of it, when they were stopped by the refusal of the other House to join with them in the usual method of deliberation. Until that impediment were in some way disposed of, they

might fairly have refused to deal with the question of supply; and if they had taken their stand upon that, it would have been difficult to dislodge them from their position. So their case stood up to the 24th of May. But on that day the House seems to have lost its head. On that day they descended from their unassailable position; joined issue upon a quarrel which would have been a foolish one even if they had been in the right, and in which they were utterly in the wrong; and laid themselves open to a just imputation of stopping all the business of the country until this quarrel were settled to their own satisfaction. It is vain to pretend that it was the question of Impositions which stopped the way. What they had been demanding since the 24th of May was not an audience for the case against the King's right to lay Impositions upon merchandise, or for other means of prosecuting that question, but the punishment of a member of the other House for words said to have been spoken in the course of debate among themselves. Some member of the Lower House had heard—or seen somebody who said that he had heard, or been told by somebody (for it is impossible to say exactly upon which degree of rumour they were proceeding) that somebody had heard—words spoken in the Upper House in censure of their proceedings and in derogation of their character for loyalty. From that time forth the one business of the country was to be the punishment of the person who had spoken those words. It was not enough to obtain a disavowal of them, or a declaration that they had not been used in the sense in which they had been understood. It was not enough to receive an assurance from the other House that if they had conceived the words to be spoken in the sense which report had put upon them they would not have allowed them to pass without censure and punishment. Their demand was that the speaker should be punished, without any 'if'; and not only punished, but punished with a severity proportionate to the offence in the opinion of the offended party. His offence was against the Commons. Till he had been punished to the satisfaction of the Commons, other business was to stop.

Such being the attitude which they had maintained since the 24th of May and were still maintaining on the 1st of June with wilder vehemence than ever, it is not surprising to find that on the 3rd they were interrupted by a message from the King, warning them that unless they proceeded forthwith to treat of his Supply, he would dissolve the Parliament on the following Thursday.[1] More surprising it is to find that they were not prepared for such a message. Yet it is plain that they were not: for the consternation it produced has

[1] C. J. p. 505; L. J. p. 716.

left legible traces in the notes of the debate. Upon the receipt of it, the leaders of the popular party all at once dropped the Bishop, began to talk about Impositions again, and tried to get back to where they were before he crossed their path. Some were even for taking the question of supply into consideration at once; and Wentworth, who used to be always loudest and foremost in opposition, was foremost that day to recommend measures of conciliation,—deprecated extreme proceedings on either side; admitted that the King had a right, as then advised, to be tender in the matter of Impositions; and concluded with a motion to "present him with some proportion of Supply presently." The majority however were not prepared to go so far on the sudden; the general current of the debate threatened the reopening of the whole dispute; and all they could conclude upon was, a Committee of the whole House to prepare an answer to the King's message.[1]

For the solution of a difficulty which required prudent considering and delicate handling, a Committee of the whole House was as unfit an instrument as could have been devised. But it was not put to the proof. The last debate took place on Friday: the House was to go into Committee the same afternoon. But I suppose the temper of the speeches had given warning that the further stirring of such a question in such an assembly would do more harm than good. On Saturday the Speaker was ill, and the House did not sit; on Monday they were informed by the King that Parliament would be dissolved the next day (which was two days earlier than the time previously indicated) "unless they should before that time perform what was by his former letters required." And on Tuesday it was dissolved by commission accordingly.

9.

Such is the history of this dissolution as it may be gathered from the Journals. But as the circumstances of it are matter of dispute among historians, and are of great importance to a true understanding of the problem with which the statesmen of the time had to deal, it may be well to add the reports of two disengaged and independent witnesses, showing what were the impressions entertained at the time by well-informed persons. A review by Bacon of the errors committed in the management of the business will be produced in its place: but being addressed to the King it does not deal with the act of dissolution. Sir James Whitelocke in the *Liber Famelicus* expresses regret and disappointment, but declines the office of

[1] C. J. p. 506.

historiographer. Sir John Eliot bears witness to the mischief caused by the rumour of "Undertaking" and by the jealousy it excited in his own party,[1] but says nothing of the incidents which provoked the King's last message. And I am not aware that any one else who served in that Parliament has left any account of its proceedings. Chamberlain however was diligent in supplying Carleton with the best intelligence he could obtain, and Lorkin was performing the same office for Sir Thomas Puckering; and their reports, which appear to have been quite independent of each other, agree so well that they may be safely accepted as substantially true.

On the 9th of June Chamberlain writes as follows:—

"While the Parliament was eager in pursuit of the Bishop of Lincoln, and would not be satisfied with the Lords' answer, nor with the interpretation of his own meaning, and retractation of his words even with tears in the Upper House, and grew every day more fiery and violent in their speeches, the King sent them a letter on the 3rd of this month, whereby he signified unto them that for divers reasons and respects he meant to dissolve the Parliament as this day,[2] unless in the meantime they fell roundly in hand to consider and provide how to relieve his wants; neither would he expect or receive other answer from them than the speedy effecting of this business.

This peremptory message wrought diversely with them, and made some of them put water in their wine, seeing the time of their reign so near an end: but the greater sort grew more averse, and would not descend to so sudden resolution: many bold and petulant speeches passed that day (for they sat long) but above all Christopher Neville, younger son to the Lord Abergeyny, was most noted, for a curious premeditate declamation made for some other time (but should have been lost if not spoken now), wherein among many other sentences he said that *nunc principes ita grossantur ut potius sit mori quam vivere:* and spared not great personages about the Court, calling them *arrisores et arrosores*, which he englished spaniels to the King and wolves to the people, with much other like stuff, not worth the remembering. Neither were others behind in glancing at principal Peers and Councillors: and Hoskins forsooth must have his oar in the boat, and tell them that wise princes put away strangers, as Canute, when he meant to plant himself here, sent back his Danes; and the Palsgrave had lately dismissed all the English that were about the Lady Elizabeth, and withal (to what purpose he knows best), put them in mind of *Vesperæ Sicilianæ*.

You may judge of the rest by these scantlings. Whereupon it was thought best to stay the bells, and the next day, being Saturday, the Speaker was sick, and so the House sat not, and by Monday it was known there was a commission out to dissolve the Parliament, whereupon the wiser

[1] Forster, vol. i. p. 25.

[2] *I. e.* Thursday, June 9th: the day on which he was writing.

sort propounded means to pacify and some way to satisfy the King, but there were so many difficulties in the manner, and the time so short, that nothing could be done; and withal they were so malcontent that their conference about impositions was refused, the Bishop protected against them, and now to be so peremptorily pressed, that being somewhat out of frame before, this did quite distemper them, and made them careless which way the world went. The truth is, it should seem by their carriage, and by that I have heard from some of them, that there was never known a more disorderly House, and that it was many times more like a cock-pit than a grave Council, and many sat there that had been more fit to have been among the roaring boys than in that assembly."[1]

In his next letter (June 30) he gives some further particulars. Since he wrote last "divers had been called *coram*, for their carriage and speeches in that House, and driven to explain themselves:"

"Among whom Sir Edwin Sandes so demeaned himself that he was dismissed without taint or touch; though upon examination it fell out there was a plot discovered to overthrow all orderly proceedings in this Parliament, and to make it utterly void, by insisting upon dangerous points, as taking away impositions, restoring of silenced ministers, and removing the Scots, with other matters likely to make the King lose all patience, and for this purpose Hoskyns was embouched, abetted, and indeed plainly hired with money to do that he did, and some others drawn on by other means: for which practices one Kettleby and his brother, (gentlemen of Gloucestershire as I take it), little Dr. Sharpe, and Sir Charles Cornwallis, (though none of them were of the House) were committed to the Tower, and there remain. Now if it be asked why they should take this course, and *cui bono?* you must understand that there was much ado and great dispute before a Parliament could be procured, and the contrary part to make good their opinion sought by all means to embroil and bring it to nothing."[2]

Lorkin's letters to Sir Thomas Puckering told much the same story. And on the 11th of September, hearing that they had not reached him, he sent the following by way of recapitulation.

"The true ground of breaking up the Parliament I conceive to be his Majesty's indignation against the House for the manner and fashion of their proceeding, wasting out the time, either *nihil agendo*, or *aliud agendo*, or *male agendo*.

The beginning they spent wholly in the discovery of Undertakers, without entering into a consideration of any other matter whatever, and wherein their violence continued till such time as Sir Henry Neville, by

[1] S. P. Dom. James I., vol. lxxvii., no. 36.

[2] Ibid. no. 53.

his advancing of the fact and the manner, gave them satisfaction. Then they left the main point for which they were assembled, the King's relief, and fell to descant upon his royal prerogative in matters of Imposition, which they pretended to be against law, and therefore instantly laboured that they might be removed, with protestations against supplying the King's wants otherwise: which how unpleasing a theme it was to his Majesty you may easily guess by the importance thereof, sith thereby was called in question, if not a moiety, yet a third part of his revenue. Yet had it been well if they had contained themselves within these bounds, and had not proceeded to personal invectives, and mutinous and seditious speeches against his Majesty, against his favourites, and against the Scots in general. Such as offended in this last kind were chiefly Hoskins and Wentworth, lawyers, Mr. Neville, and Sir Walter Chute. But the former was the most exorbitant, as well for the matter and the manner of his speech, as for the practice and conspiracy (so they here qualify it) with Sir Charles Cornwallis and Dr. Sharpe about the contriving of it. His speech imported thus much in effect, that he could wish his Majesty could be more reserved of his honours and favours to strangers, and more communicative to those of our native country, especially in the weighty affairs of state, for fear a *Sicilian Vespers* or *Parisian Matins* did ensue: commending withal the prudence of the Palatine as most worthy to be imitated: who, of the little number that was sent over with her Highness, retained few or scarce any at all. Which words of his passed the House not only without censure, but when Sir Henry Wotton called them in question, were by them justified as having nothing exceeded the bounds of modesty.

Other occasions occurred, but these were the main inducements to persuade the King to dissolve the House as he did."[1]

We see here that, besides the obvious causes of the breach, arising from the old struggle between Privilege and Prerogative (in which the refusal of supplies on one side and the power of dissolution on the other were the weapons constitutionally provided), both these reporters speak of a "plot" or conspiracy to bring about, not the victory of either, but the defeat of both: a conspiracy to *prevent* a peaceable issue, by some party whose object was simply to make the Parliament a failure. It is not easy upon the first view to see why anybody should have wished for that result. That there should have been persons who, when it was a question whether a Parliament should be called, thought the experiment unlikely to succeed and therefore wished that it should not be tried, is intelligible enough. But when it was too late to prevent the *trial* of a Parliament, it is hard to understand how any one belonging to the Court party could have wished it to end without voting supplies. Other means of re-

[1] 'Court and Times of James I.,' vol. i. p. 345.

plenishing the Exchequer had been tried in vain; and to wish this to fail was to wish the King to be still in straits for money; which could not be the interest of those who fed upon his bounty. But the complaint repeated so frequently in the Journals, and from so many sides, of the "casting in of bones," and of "popishly-affected persons" seeking to keep them in broils, prove that the existence of such a party was believed in at the time, and points to the quarter whence it was supposed to spring. The Earl of Northampton was no doubt the "popishly-affected" person supposed to be at the head of the conspiracy—Sir Charles Cornwallis and little Dr. Sharpe being his instruments. He was known to have been against calling this Parliament, and he treated the dissolution of it, almost openly, as a personal victory; making a kind of triumphal entry into London from Greenwich immediately after, with a great attendance of gentlemen on horseback, and "with only Sir Charles Cornwallis in his coach;" a thing "much noted," says Chamberlain, "in the manner and the time."[1] What use he proposed to make of his victory we cannot tell, for he died the next week. But I suppose he thought that the hope of relief through Parliament withheld the King from arbitrary measures, to which, if he could be made desperate of remedy from that quarter, he would be the more easily induced to resort.[2] To the advice of councillors who were aiming secretly at this end, his natural irritation at the offensive language used in the Lower House laid him open: and the resolution to shorten the time allowed to the Commons for re-consideration (for which it would be difficult to invent any plausible justification in policy) was probably taken suddenly in a fit of angry impatience under their influence; Suffolk and Somerset (now that they found what was the end of "playing the knave" with the Undertakers) having very likely joined with him.[3]

The silence of Bacon during all these later debates (for after the

[1] Chamberlain to Carleton, 9th and 30th of June, 1614.

[2] "And indeed I could wish they would not stand too stiff, but take some moderate course to supply him by ordinary means, *lest he be driven to ways of worse consequence, wherein he shall not want colour both from law and pulpit.*" Chamberlain to Carleton, 12 May, 1614.

[3] Mr. Gardiner ('Prince Charles and the Spanish Marriage,' vol. i. p. 21), relying upon the reports of Gondomar to the King of Spain, attributes the resolution to an understanding between James and the ambassador that in case of a quarrel with Parliament he might count on the support of Philip. Ambassadors, like other people, are apt to impute to their own action the motions of the world in which they move; and the reports of a man who is magnifying his own services in the eyes of one to whom he looks for his reward, and who has no means of checking them, ought to be received with caution. It is probable enough, however, that if James had not seen a prospect of relief to his Exchequer by the dowry of the Infanta, he would not have ventured upon the dissolution; and therefore that Gondomar's assurance, if not the cause, was at least the condition of it. But

16th of May, when he accepted his part in the proposed conference about Impositions, his name occurs in the Journals only twice, and that only as forming one of the select committee on the Bishop's case; nor is he mentioned by any contemporary newsman as having had anything to do with them) is to be accounted for, probably, by his sense of the peculiar condition upon which he held his place. His office having been decided to be a disqualification for the duties of a member, he could hardly obtrude his advice where it was not asked and where he could not hope that it would be acceptable. But that the dissolution was in any way owing to his action or advice, is an assumption entirely gratuitous, and in my opinion improbable in the highest degree. It is at variance with all the external and collateral evidence; which imputes the frustration to a set of persons both in the House and out of it,—in the House as actors, out of the House as instigators,—with whom he had neither sympathy nor influence; with whom in fact he had nothing to do. It is at variance also with everything we know of his wishes, hopes, fears, proceedings, and policy. Such an upset was in his opinion not merely a thing to be avoided, but of all possible issues the very worst that could happen. That the King should "once part with his Parliament with love and reverence," was in his opinion a thing "inestimable for his safety and service."[1] The parting in this case was with mutual irritation and sense of wrong, upon terms mortifying to both, and not calculated to make either think better or kindlier of the other. It was satisfactory to those only who wished to see Parliamentary government brought into discredit. How far Bacon was from being one of them has appeared clearly enough already, and will appear more clearly still hereafter.

I cannot accept it as a sufficient account of the matter. For it leaves unexplained the particular difficulty. It does not explain why James *hurried* the dissolution, and so cut short a deliberation which *might* have ended in a vote of subsidies by the House of Commons.

[1] See Vol. IV. p. 371.

CHAPTER III.

A.D. 1614. ÆTAT. 54.

1.

When both parties in a dispute lose their temper it is not likely that either of them will conduct it wisely. Though we do not know precisely what the provocation was upon which the King determined to send that peremptory message, we can hardly doubt that he would have done more wisely to refrain, at least until the contumacy of the House had expressed itself in some act for which the House as a body was more distinctly responsible than it could ever be for the speeches of individual members. As a body, the Lower House had involved itself in a very foolish quarrel, but it does not appear that it had yet passed any act or resolution to which just objection could be taken by the Crown. With regard to the Bishop, they had appointed a Committee to consider what further should be done, and that Committee had not concluded its deliberations. With regard to Impositions, they had appointed a Sub-Committee to argue the question in conference with the Lords, but the argument had not come off. With regard to the King's last message, the answer was still under consideration. With regard to supplies, they had delayed but they had not refused them. The remarks of Clarendon on the dissolutions of the earlier Parliaments of the succeeding reign seem to me to apply perfectly well to this. "And here," he says, "I cannot but let myself loose to say that no man can show me a source whence those waters of bitterness we now taste have more probably flowed, than from these unreasonable, unskilful, and precipitate dissolutions of Parliaments; in which, by an unjust survey of the passion, insolence, and ambition of particular persons, the Court measured the temper and affection of the country; and by the same standard the people considered the honour, justice, and piety of the Court: and so usually parted at those sad seasons with no other respect and charity one toward the other than accompanies persons who never meant to meet but in their own defence. In which the King had always

the disadvantage to harbour persons about him, who with their utmost industry, false information, and malice improved the faults and infirmities of the Court to the people, and again, as much as in them lay, rendered the people suspected, if not odious, to the King. . . . It is not to be denied that there were in all those Parliaments, especially in that of the fourth year, several passages and distempered speeches of particular persons, not fit for the dignity and honour of those places, and unsuitable to the reverence due to his Majesty and his councils. But I do not know any formed Act of either House (for neither the Remonstrance nor Votes of the last day were such) that was not agreeable to the wisdom and justice of great Courts upon those extraordinary occasions. And whoever considers the acts of power and injustice of some of the ministers, in those intervals of Parliament, will not be much scandalized at the warmth and vivacity of those meetings."[1]

The last sentence may require some modification; for the grievances which excited the Commons in 1614 were not so much acts of oppression by great men as pretensions of legal authority on the part of the Crown. But it may be truly said that whoever considers the nature and issues of those constitutional disputes, will excuse a good deal of warmth and vivacity on both sides. So uncertain as the consequences were of making the Crown absolutely dependent upon a vote of the Lower House for the means of carrying on the government, the King might well be excused for hesitating to throw away a source of revenue which the authorized interpreters of the law had hitherto declared to belong by law to him. So indefinite as the power was which the undisputed command of that source of revenue would have put into the King's hands, the Commons might well be excused for fighting hard to establish a check upon it. In proportion to the importance of the controversy was the passion with which on either side it was conducted. On both sides this passion bred intemperance. The King was ill advised in attempting to enforce a vote of supply by a threat of dissolution, and afterwards in committing some of the members to prison for speeches in the House which he was not obliged to know anything about; and for burning the notes which had been prepared by those who had had parts assigned them in the Committee of Conference.[2] But he was a man whom nature had made at once extremely affectionate and extremely irritable; and though he had tried hard to be patient, yet when he found that the House was occupying itself in personal invectives against

[1] Hist. of the Rebellion, book i. p. 39.

[2] Not that this last was so *futile* a proceeding as it is sometimes represented to be. Though it did not affect the value of the arguments, it prevented the publication.

the men he loved—most of them the friends and favourites of his youth, for he never cast a friend off—his patience failed him and he did a foolish thing. The Commons, on their side, were men too; and did their best to countenance and justify him in both these acts. By insisting on the punishment of the Bishop of Lincoln for what they considered slander of themselves, they deprived themselves of all right to maintain that speeches in the House, being offensive to persons out of the House, were exempt from punishment at the instance of the offended party. And by suspending all consideration both of the question of Impositions and the question of Supply, to make room first for the pursuit of such a quarrel as that, and then for intrusion into matters in which they had no constitutional right to interfere, they deprived themselves of all right to complain of the dissolution as interrupting them in the discharge of their proper duty. Their excuse is of the same kind as the King's excuse. They were angry because they could not get what they wanted: and they did foolish things.

But however the blame may be apportioned, the issue was not satisfactory to anybody except the enemies of Parliaments. To part without any reform accomplished or grievance redressed, was a disappointment to the popular party. To part without granting supplies was no satisfaction to them. It was not what they intended or what they wished. Those of them who were statesmen, and there were good statesmen among their leaders, could well understand both the evils and the dangers of an empty Exchequer; and though History may be content with pronouncing her censures and so pass on to the next case without asking more questions, the men of the time could not forget that censures remove no difficulties, and that the next question was, what the Government was to do? They saw the state so deep in debt (already more than half a million, which was more than a whole year's ordinary revenue, and still rapidly increasing) that it could not even borrow except at extravagant interest; Government security being the worst in the land. They saw the natural and constitutional remedy by Parliament twice tried in vain; each time leaving the case worse than it was before; and for the present at least, all hope of relief from that quarter cut off: for though the last failure may have arisen from mismanagement, and might perhaps have been avoided, it was not the less past mending. The other sources of relief which remained available were not such as it was desirable to drive the King upon, either for his own sake or the people's. By straining the prerogative hard, something might no doubt be made of monopolies, of penal laws, of feudal tenures, of fines for disobeying proclamations, of raising rents, of new imposi-

tions, and the like: but such remedies, though they might a little relieve the present symptoms, would but hurry on a more fatal disease. Something might possibly be done by a wealthy marriage for the Prince; but that must be with Spain, and the thought of such a thing was hateful to the people as a compromise with Antichrist. Something might be done by selling Crown property: but not without beggaring the inheritance of the Crown. Something also (and it was the least objectionable remedy) by the sale of titular honours; but not without depriving such honours of all their real value. What else?

Had the failure of the Parliament been the King's fault alone, he might perhaps have partly recovered his position by recanting his error. But it is too evident that it was not so. It is too evident that the House of Commons could no longer be trusted either for understanding or for acting upon the true interests of the kingdom, even according to the most popular construction of them. The virtuous and consistent and patriotic members, such as Sir Edwin Sandys, were no longer masters of the House. It had shown itself capable of becoming a factious assembly "careless how the world went," and its movements could no longer be answered for by anybody.

Then again, putting aside the case of the King in his personal capacity, and of the Crown in its relation to the Commons, in what condition did this dissolution leave the people themselves? Abroad, there was Spain, with the Pope to back her, ready to invade on the first opportunity. What case so inviting to an invader, as that of a nation whose Government can raise no money? Ireland, with both Spain and the Pope at her back, was always ready to rebel: what better opportunity for rebellion? The Dutch would gladly beat the English merchants out of the markets of the world: how were they to be protected against foul play? The pirates of Algiers and Tunis were plundering them as they passed: how were they to be protected against robbery? At home, though there was no great evil pressing nor any great danger threatening, time was working changes as usual: new cases were arising which Government required new powers to meet; proclamations being but a voice, which could not be enforced without sanction of a previous law. Whatever good therefore was designed for the nation in that long array of bills prepared by the Government for the last Parliament, or in any others which the popular party designed to bring in, all that good was at a stand.

To call another Parliament immediately would have been a hazardous experiment,—as likely to do harm as good. But there was one way left by which those who regretted the state of things which had thus been brought about might help to rectify it. It can hardly

be doubted that many Englishmen, both in and out of Parliament, were sorry that the representatives of the people had been forced to part without imposing a tax for the benefit of the King. As many as were of that mind might offer the King their own share of such a tax, of their own free will. The law which forbade any man to be taxed without the consent of his representatives, could not be construed as forbidding each man to tax himself. Those who thought it right so to tax themselves, would naturally think it right for others, similarly circumstanced, to do the same, and might endeavour to persuade them to do it. While the King on his part, though forbidden to *exact* any such contribution without consent of Parliament, was not forbidden to *receive* one which (with or without that consent) was freely offered. If therefore a party of noblemen and gentlemen, knowing what had passed, weighing the consequences of it, and concluding (as they might well do) that such a notorious beggary of the Exchequer, together with such a notorious breach between the Executive and the Legislature, was dangerous to the best interests of the kingdom; that it had been brought about by no just or rational course of proceeding, but by accidents and blunders and faction; and that it was such a conclusion as every wise and honest man in the kingdom must, if he understood the nature and consequences of it, regret;—if such a party agreed, first to make a subscription among themselves, and then to get up a subscription through the country, for the relief of the Exchequer, and for a better proof that the King, however he might have broken with the Parliament, had not lost the affections of the people; taking at the same time all practicable precautions to make people understand that it was really and truly a free gift,—that any man might give or not give as he pleased, and that while those who gave would be thanked, those who did not give would pass unnoticed and unchallenged; no just objection could be taken to the proceeding.

As some questions of importance turn upon the manner in which the business was conducted, I may as well give *in extenso* the Archbishop's letter which appears to have been the very beginning of it.

THE ARCHBISHOP OF CANTERBURY TO THE BISHOP OF NORWICH.[1]

June 1614.

My very good Lord,

I doubt not but you have heard what was the issue of this late Parliament, and how by the harsh courses of some men his Majesty received

[1] Printed in appendix to Bp. Goodman's 'Court of King James I.' (edited by Brewer, 1839), vol. ii. p. 157.

no kind of satisfaction in that great cause wherefore he called them, that is to say, for the supplying of his necessities. This event producing a great damp on all sides, it pleased God to put into the minds of my Lords the Bishops, after the expiring of the Convocation, to think upon some course how they might in some measure testify their duty unto their sovereign by some free-will offering.

The matter whereupon they resolved was, that every Bishop should voluntarily send unto the King the best piece of plate which he had; and if his Majesty should be pleased to accept of this, then we promised to move the civilians, and others of the abler sort of the clergy, according to their proportion to do the like. In brief his Majesty graciously accepted it, conceiving that it would produce that effect whereat we principally aimed, that this our example would bring on the Lords and others of the temporalty to do the like. And verily God blessed our intendments, for his Highness immediately making it known in the Court, the Lords of the Council and the rest of the nobility presently took it up, and not only themselves do perform the same, but sent forthwith to the Judges, to the Lord Mayor and Aldermen, together with other persons of special note, so that I trust the harvest will be great throughout the better sort of the whole kingdom. We of the Bishops that were here presently sent in our gifts, myself leading the way; and some of our company, not having any piece of plate sufficient to express their zeal to this service, sent in some one of smaller worth, but filled with gold, so that it made a present of reasonable value. The desire of us all is, that your Lordship will bear a part in this work, and that you will move the clergy in your diocese to send in such a voluntary gratification, whereunto those which were here in Convocation already prepared, out of this ground, that if the Parliament had obtained the expected success, they might well have conceived that they should have granted no less than three or four subsidies. Our meaning in this is, that no poor man should be grated on, but that it should come freely from the purses of those who are of ability, and shall part with that which is of ornament and luxury rather than of necessity; and where men are unwilling to part with their plate, they may send in some convenient sum of money as a redemption for the same. I pray your Lordship with all diligence and dexterity to set yourself to this work, wherein I trust all good men will concur with alacrity; for it is a shame unto our whole nation that so good and gracious a King should be driven to necessity, when we, his people, do live in plenty. And I know it was a singular comfort unto his Majesty, that, when some have been unrespective of him, there were not wanting others which remembered their duty, and that so opportunely. So ceasing to be any way further troublesome unto your Lordship, with my hearty commendations.

I rest your so very loving brother

G. CANT.

Lambeth, the . . . of June 1614.

I entreat your Lordship to send me word what you do herein, and when you shall convey it up, to send me a note of all the parties, and of the

proportion of their gifts, that I may make up a book of all that is bestowed throughout the whole kingdom.

To the Right Reverend Father in God, my
good Lord and Brother, the Lord Bishop
of Norwich give these.

So far, I suppose no one will maintain that the proceeding was unconstitutional: for the offer thus made by the members of the *Convocation* (with whom the legal power of taxing the clergy lay) may be considered only as an irregular way of doing what they had a right to do, and would no doubt have done in the regular way if they had had the opportunity. And if individual members of the laity chose to follow the example of the Bishops, why not? "The Archbishop of Canterbury" (says Chamberlain) "began with a basin and ewer, and redeemed it with £140. The Bishop of Winchester as much, Ely £120, et *sic de cæteris*. The noblemen followed the example. The Lord Chamberlain and the Earl of Somerset gave each £200; the Earl of Salisbury, £300; the rest less; Mr. Secretary gave £100; and all officers towards the law or receipt, according to their minds; Sir Henry Fanshawe, £50; Sir Christopher Hatton, as much; the Lord Coke, £200; but the rest of the Judges come but slowly after: for I know where some presented but £20, which was refused. The money is paid into the Jewel House."[1]

What Bacon gave I do not find mentioned, nor do I know whether up to this point he had had anything to do with the business. But the next step was a critical one; and his opinion was either asked or offered as to the course which should be followed. "Letters," Chamberlain adds, "shall be sent into all the shires to see how they will follow the example." Now it is obvious that though the Bishops, Lords, Judges, and Courtiers, in giving what they pleased, used no more than their lawful liberty to dispose of that which was their own, methods might be used to induce the shires to follow their example which would be far from lawful; and that the constitutionality of the further proceeding depended entirely upon the effect of the letters that were to be sent out. And therefore a paper which I have found among the Cotton MSS. addressed to that particular point, written in the hand of a secretary whom Bacon commonly employed about this time, and docketed in his own hand, must be regarded as a document of some importance. Though his name is not upon it, the internal evidence of style, combined with the circumstances I have mentioned, will leave little doubt in any mind that it is his own composition: and for my own part I take it to be one of

[1] Chamberlain to Carleton, 30 June, 1614.

those compositions which are especially his own, being a voluntary service, not performed in public or in conjunction with others, but a piece of advice privately submitted to the King or Council, in a matter which he thought important.

CERTAIN POINTS TO BE OBSERVED IN THE VOLUNTARY OBLATION WELL BEGUN FOR HIS MAJESTY'S HELP AND SUPPLY.[1]

In general there be three things which are *tanquam fines*, unto which relation is to be had in the ordering of this matter.

First, that it have no show of any compulsory means to draw men to give, or any pressing it by authority.

Secondly, that the meaner and poorer sort of people be not at all touched or dealt with.

Thirdly, that such course be taken as may encourage and give the better sort an edge and appetite to give cheerfully and plentifully.

For that which may conduce to these ends, the points following are to be put in practice.

1. That the terms of Benevolence and Contribution (whereof the one is forbidden by Act of Parliament, the other is the ordinary word for payments taxed and rated in the country) be avoided; and that the terms whereby it shall be expressed shall be *Gift, Present, Offering, Oblation,* or the like.

2. That there be no precise method of beginning with the greater and superior and so descending in order to the meaner and inferior; or that men should give in the body or company whereof they are; but that every particular man's gift (if he like better to go by himself) may be accepted and presented by what means himself best liketh.

3. That there be no letters from his Majesty nor the body of the Council, nor the Lieutenants, concerning the same. But that particular councillors, noblemen, great officers, and the like, by their several letters or word of mouth, do commend it to some selected gentlemen in the country which are most industrious and gracious with the shires or towns; or to such as have dependence upon them as officers.

4. That there be no formal course of appointing either the collector,—as that he must be either the deputy-lieutenant, or

[1] Cott. MSS. Cleop. F. vi. f. 391. Docketed in Bacon's hand: "Supplie: free oblation to the K."

Custos Rotulorum, or clerk of the peace (or the like); nor yet of the presenter to the King, but that it be left to the choice of the justices of peace for the shire, and the principal townsmen in towns, whom to choose to be their collector, and likewise by whom about the King to present their gift.

5. That it be given out abroad that Mr. Secretary or Sir Thomas Lake, being daily attending about the King, have order to receive the bills or schedules of names of such as do give, and the sum or value of their gift, and to show the same bills or schedules to the King weekly; and the like bill to the Prince to be preferred by some near about him.

6. That there be copies spread abroad, especially of such as give most bountifully, that others of their rank may perceive they cannot without discredit and note fall too low.

7. That no fees or payments be taken out of that which shall be presented, nor that it be paid into the Exchequer, but be consigned over to the payment of the King's debts; and those debts first that concern the public, as the Navy, Ireland, &c.; and that above all care be taken that no part of the plate or otherwise be given away.

8. That if much should come in in plate, which will be a great gain either to the Jewel-house or to the goldsmith, consideration be had thereof, and a good proportion answered to the King out of the same by the officers of the Jewel-house or goldsmiths.

9. That the city of London by no means use not the course which commonly they take, to make any rating by companies, whereby it may reach to the poor, but that they choose the ablest men of every company with whom to deal.

10. That the like course be held by those that shall deal for the King in all counties and towns, singling out those which either for ability or credit will be forward, and importuning or pressing no man.

11. That for the present time there be no mention at all made of the voluntary delivering in of Privy Seals, nor that that course be allowed or accepted of (as not helping his Majesty's present necessity); for otherwise many will turn their gift into that kind.

12. That it be now at the first hotly and closely followed, and not suffered to cool, for else it will be *acribus initiis fine incurioso.*

13. That special care be taken that in the accepting of a gift

from any Recusant beyond proportion, it be not conceived there is some secret dispensation or toleration.

14. That howsoever no manner of compulsory means is to be used, nor no show thereof, yet if any malicious person shall deride or scorn or slander the frank disposition of the King's subjects, or purposely dissuade it or seek to defeat it or divert it, that be questioned and severely punished.

15. That in the conclusion there be a Proclamation of thanks; as well to comfort the King's loving subjects, as to publish and sound abroad their affection unto all parts.

I take this paper to afford good evidence that if any of these letters were sent in the name of the King, or from the body of the Council, or from the Lieutenants, it was not the fault of Bacon. Not being himself a member of the Council, he could not control their resolutions; and it appears that in some things they took a course contrary to this advice. There is reason to believe that their first design was to make the collection by Commission under the Great Seal, which was objected to by Coke (now a Privy Councillor) not only as impolitic (in which Bacon would have agreed with him) but as illegal—in which he differed: and though Coke retracted that opinion afterwards, it prevailed at the time, and prevented the adoption of that course. The course chosen, however, was scarcely more in accordance with Bacon's suggestions: for the motion was made by letters *from the Council* to the Sheriffs, Justices of the Peace, and Mayors.[1] And here we may leave the business for the present, as we shall have to return to it afterwards.

2.

Of Bacon's employments during the remainder of this year I find but few traces.

The kind of business which occupied much of his time may be partly inferred from a letter to Sir Thomas Lake, which happens to have been preserved; relating to the legal form of a grant of certain lands forfeited to the Crown through the attainder of Rookewood, one of the persons engaged in the Gunpowder Plot. But it appears to have been merely a piece of ordinary lawyer's work, into the particulars of which it is not worth while to inquire further.

[1] See several of them printed from the Council Register by Gardiner, vol. ii. p. 396.

To Sir Thomas Lake.[1]

Sir Thomas Lake. The warrant you sent me for the drawing of my Lord Walden's grant from his Majesty, the word *concealed* in the warrant doth hinder the force of the patent, for that the said lands were once in charge, although they were afterwards discharged by plea and judgment thereupon against his Majesty. So that his Majesty was answered no profit or revenew for the same. You must be pleased to send me a warrant more general, viz. of all the lands of the said Rookewood which by the industry of the said Lord Walden are found since Easter Term last by Inquisition to be forfeited to his Majesty by the attainder of the said Rookewood: otherwise I cannot draw any grant effectual.

Your H's loving friend
to command.

Fr. Bacon.

xi^th^ of July
1614.

3.

The next paper has no date, nor am I aware that any of the facts or persons referred to in it will enable us to fix it nearer than this —that it was drawn up after the dissolution of the Parliament of 1614, and not very long after. But I take it that the long vacation of that year is the date most probable. For the subject was one which Bacon seldom failed to press upon the attention of the Government when he found or could make an opportunity; the present opportunity was best if taken at once: and he did not often let a long vacation pass without preparing some suggestive memorial for the King. He returned to the subject again about two years later in a more detailed and elaborate proposition, which will appear in its place and form the best comment upon this: concerning which it is enough to say here that the suggestion was adopted and acted upon, and some way made, though we do not know exactly what was done.

A Memorial touching the Review of Penal Laws and the Amendment of the Common Law.[2]

Forasmuch as it was one of His Majesty's Bills of Grace, that

[1] S. P. Dom. James I., vol. lxxvii. no. 61. Original: the subscription in Bacon's own hand.

[2] Cott. MSS. Tit. F. iv. 11. Copy in a contemporary hand, without date or name. Docketed in another, "Bacon touching the amendment of Laws."

there should be certain Commissioners, 12 Lawyers and 12 Gentlemen of experience in the Country, for the review of penal laws and the repeal of such as are obsolete and snaring, and the supply where it shall be needful of laws more mild and fit for the time, etc.[1] and thereupon to prepare bills for the next Parliament: It were now a time for his Majesty out of his royal authority and goodness to act this excellent intent, and to grant forth a Commission accordingly, wherein besides the excellency of the work in itself, and the pursuing of the intent of that Bill of Grace, two things will follow for his Majesty's honour and reputation.

The one that it will beat down the opinion which is sometime muttered, That his Majesty will call no more Parliaments.

The other that whereas there are some rumours dispersed that now his Majesty for the help of his wants will work upon the penal laws, the people shall see his disposition is so far from that, as he is in hand to abolish many of them.

There is a second work which needeth no Parliament, and is one of the rarest works of sovereign merit which can fall under the acts of a King. For Kings that do reform the body of their Laws are not only *Reges* but *Legis-latores*, and as they have been well called *perpetui Principes*, because they reign in their Laws for ever.

Wherefore, for the Common Law of England, it appeareth it is no Text law, but the substance of it consisteth in the series and succession of Judicial Acts from time to time which have been set down in the books which we term *Year Books* or *Reports*, so that as these Reports are more or less perfect, so the Law itself is more or less certain, and indeed better or worse. Whereupon a conclusion may be made, that it is hardly possible to confer upon this kingdom a greater benefit than if his Majesty should be pleased that these books also may be purged and reviewed, whereby they may be reduced to fewer volumes and clearer resolutions: which may be done,

By taking away many cases obsolete and of no use, keeping a remembrance of some few of them for antiquity sake.

[1] Brought in by Bacon on the 2nd of May 1614. See Book V. Chap. II. § 4.

By taking away many cases that are merely but iterations, wherein a few set down will serve for many.

By taking away idle Queries, which serve but for seeds of incertainty.

By abridging and dilucidating cases tediously or darkly reported.

By purging away cases erroneously reported and differing from the original verity of the Record.

Whereby the Common Law of England will be reduced to a corse or digest of Books of competent volumes to be studied, and of a nature and content rectified in all points.

Thus much for the time past.

But to give perfection to this work his Majesty may be pleased to restore the ancient use of Reporters, which in former times were persons of great learning, which did attend the Courts at Westminster, and did carefully and faithfully receive the Rules and Judicial Resolutions given in the King's Courts, and had stipends of the Crown for the same; which worthy institution by neglect of time hath been discontinued.

It is true that this hath been supplied somewhat of later times by the industry of voluntaries, as chiefly by the worthy endeavours of the Lord Dier and the Lord Coke. But great Judges are unfit persons to be reporters, for they have either too little leisure or too much authority, as may appear well by those two books, whereof that of my Lord Dier is but a kind of note book, and those of my Lord Cokes hold too much *de proprio*.

The choice of the persons in this work will give much life unto it. The persons following may be thought on, as men not overwrought with practice, and yet learned and diligent, and conversant in Reports and Records. There are six names whereof three only may suffice according to the three principal Courts of Law, the King's Bench, the Common Pleas, and the Exchequer.

Mr Whitlock.	Mr Hackwell
Mr Noie.	Mr Courtman
Mr Hedley	Mr Robert Hill.

The stipend cannot be less than 100*l.* per annum. Which nevertheless were too little to men of such quality, in respect of some hindrance it may be to their practice, were it not that it will be accompanied with credit and expectation in due time of preferment.

4.

Another fragment of Bacon's labours, though a piece of professional business (from which we must always beware of inferring too much as to a man's personal feelings and opinions), derives an interest from the manner of treatment, and as showing what he had to say upon a subject which (so far as I remember) he has not touched upon anywhere else. He does not appear to have been at any time of his life a sportsman. We never hear of him at a hunting or hawking party, and though there were fish-ponds at Gorhambury, it is not known that he ever tried to catch a fish. In his Essays he has touched upon most things that "come home to men's business and bosoms," not excluding their less important amusements and recreations, but I do not think he has said anything in behalf of field-sports, which formed so large a part of the business of the King and Court. His official duty, however, would occasionally bring him into contact with the question. On the 25th of April 1614, shortly after Parliament had adjourned for the Easter recess, he was instructed by the Council to inquire into a case of fence-breaking and poaching in the forest of Windsor, and, if he thought fit, to proceed against the offenders in the Star Chamber, the next term.[1] And in a manuscript volume in the Harleian collection, where some lawyer, or some one otherwise connected with the Courts of law, appears to have entered notable things from time to time, I find under the date 23 October notes of a speech made in the Star Chamber upon a case of deer-stealing in the forest of Gillingham, by "Mr. Attorney." No one will doubt that "Mr. Attorney" must have been Bacon: and though the year-date is doubtful, nothing of importance depends upon it. Whenever it may have been that he was called on to prosecute a deer-stealer, it is equally interesting to know what he had to say about the offence and how he dealt with it: and Michaelmas term 1614 being as likely a date as any, it has as good a right to come in here as anywhere else.

IN CAMERA STELLATA XXIII° OCTOBRIS.—NOTES OF MR. ATTORNEY'S [SPEECH] CONCERNING DEER-STEALING.[2]

May it please your Lordships

There is brought before you this day three several offences. The first is the King's case, followed as it seems by the appoint-

[1] Register of Council Office.

[2] Harl. MSS. 1576, f. 74.

ment of the Lord Chamberlain,[1] for an offence in the forest of Gillingham. The other two are causes of noblemen. In which though I note the privitie case, I will yet observe the order of time. My Lords, in my observation length of speech is not fit in this Court except it be upon two occasions, either upon doubtful evidence or upon a new cause. It is true where evidence is doubtful you must do with the balance of Justice as with the balance in weighing; you must be the longer with the balance in your hands. And in a new case it hath been the custom of this Court to read a kind of lecture. For this Court doth not only do justice, but takes away evil opinions from the country. Otherwise I hold it ill in case of justice to seek to delight the hearers, specially a man's self.

I see no occasion of length of speech: yet I'll speak a little of the general nature of the offence.

My Lords, these offences of deer-hunting and stealing and malefactors in parks forests and chases, I hold them in their nature great, though these instances are not the greatest.

1. Forests, Parks, and Chases, they are a noble portion of the King's prerogative: they are the verdure of the King, they are the first marks of honour and nobility, and the ornament of a flourishing kingdom. You never hear Switzerland or Netherland troubled with forests. It is a sport proper to the nobility and men of better rank: and it is to keep a difference between the gentry and the common sort; and so I hold this fault not vulgar.

2. And are an excellent remedy against surcharge of people and too many of inhabitants, that the land through it grow not to sluttery, &c. And these green spots of the King are an excellent ornament to the beauty of the realm.

3. They are excellent for the preservation of woods, and if the Druydes and Ancients of England should now live, they would scarce get a cell or sacrarie under shady trees. It is parcel of the King's prerogative, and such as formerly they would not communicate; for in the statute of Merton there was a request made of the nobility for the proper imprisonment of such as they should take in their parks and ponds; as if the Lord Montague

[1] This would be Somerset, if it was in 1614. His father-in-law, the Earl of Suffolk, had been made Lord Treasurer early in July; and he succeeded him as Lord Chamberlain.

or Lord Arundel should imprison in this case; the King denieth it: *Honorem meum non dabo alteri.* So if it be not a royal flower of the Crown, it is a green leaf at the least. Again, it is *mos patrius,* and he that will not be touched with that, I hold him very light. And it is the care and endeavour of a number of laws. Then you see what a watch tower the King's Majesty hath erected, that the King's Justice in Eyre is but his sentinel over his forests.

Lastly, *Affectus Regis:* the King's pleasure is known, and should work in the King's subjects their due obedience in a thing not vulgar. It is excellent for the health, and one of the cheerfullest exercises for his Majesty, when he doth withdraw himself from greater affairs. It is *subdiale exercitium,* and yet a kind of artificial solitude. And as I have noted, many excellent resolutions and counsels some time came to this table out of the wood. It argues the offence at least requires severity, because it is not every time found: they come not every day, and therefore they should be the more severely punished. For *ubi deficit custodiæ securitas ibi opem fert legis severitas:* That which is hardest to keep in custody is fittest to secure by severity. Other sorts of robberies proceed upon necessity, and rape and battery upon passion. But this is a bravery, petulancy, wantonness, lustfulness, and riotousness of the people, to do as they think good, and in that respect the more severely to be punished.

Having thus shortly gone over the general, I will tell you what I think of the particular. And so proceeded to censure.

CHAPTER IV.

A.D. 1614–15. ÆTAT. 55.

1.

THE angry parting between the King and Parliament, with the grave differences which led to it, though not followed by any measures of violence or severity, could not but bear some fruits of disorder. In the heat of the agitation against ecclesiastical grievances, a Puritan clergyman named Peacham had made some charges against his proper Bishop—the Bishop of Bath and Wells—for which he was brought to answer before the High Commission. His house being searched for evidence, several loose papers were discovered there, not bearing upon the immediate question, but containing charges against the King and the great officers of State. Along with these, was a sermon in which all those charges were collected and set forth, with text and prayer prefixed, as if ready to be preached: the whole forming a violent invective against the iniquities of the government, coupled, it would seem, with warnings (whether imprecatory or deprecatory I do not know) of judgment to come, in the shape of sudden death to the King, massacre of his officers, or risings of his people; and implying an acquaintance with proceedings of State which it was supposed he could not have known of without the help of some one in a higher position. What the offence would have seemed to amount to in our eyes, it is impossible to say: for no sample of the composition has been preserved, and the only description we have of it is from the pen of the King himself, who cannot be taken for an impartial witness. What we know is that these papers, being laid before the Privy Council, were by them judged to contain treasonable matter; and that Peacham, who was already in durance waiting the sentence of the High Commission, was thereupon committed to the Tower.

For the libel upon the Bishop he was shortly after by sentence of the Court deprived of his orders. For the libel upon the King, which was thought to be a more dangerous matter as affairs then

stood, he was now to be called in question. In his first examination, which was taken before the Archbishop of Canterbury and the other members of the Privy Council in the usual way—at what exact date I have not ascertained—he seems to have admitted that the papers were in his own handwriting. But that was not thought enough. They were supposed to import a conspiracy for the purpose of exciting popular discontent; and the first object was to find out what other person or persons were concerned in it. Upon this point they could get no light from him;[1] and imputing his silence to obstinacy (for which they may perhaps have had some reasonable ground, though we are not told what it was) they determined,—whether upon their own suggestion or by the King's command, does not appear,[2]—to put in force a power which, though it had been rarely used since James came to the throne, was still believed by everybody to be a power residing in the Crown by virtue of its prerogative. On the 18th of January 1614–15, they issued the following warrant:

After our hearty commendations: Whereas Edmund Peacham now prisoner in the Tower stands charged with the writing of a book or pamphlet containing matter treasonable (as is conceived), and being examined thereupon refuseth to declare the truth in those points whereof he hath been interrogated: Forasmuch as the same doth concern his Majesty's sacred

[1] "Being asked with whom he hath conferred, or what information he hath from others, by word, message, or writing, of those slanderous things set down in his papers, or any of them? he answered that no person whatsoever did either by word, message, or writing inform him of any of those things; and that he never had any conference with any man touching any of them, neither did ever make any of these known to any person." Second examination of Edmond Peacham, taken before the Lords at the Tower, Jan. 14, 1614. Dalrymple's Memorials, p. 54.

[2] It was probably the result of their deliberation on Sunday the 15th, when the question was pressed upon their attention by Winwood. In a letter printed in Dalrymple's Memorials (p. 55), which must have been written between Monday Jan. 16 and Monday, Jan. 23, he says, "On Saturday last, in the afternoon, the Lords appointed by his M. to examine Peacham in the Tower, assembled there about 2 of the clock. A copy of the examinations I send herewith, which your Lordship may be pleased to impart to his M. [This would be the examination of the 14th quoted in the last note.] I find not the man to be, as was related, stupid or dull, but to be full of malice and craft. On Sunday I pressed the Lords being in council, to advise and resolve for the further proceeding against this delinquent. The Lord Chancellor, by reason of his indisposition, was absent from the Council. The term now approaching, which on Monday next doth begin, the Lords do hold it most convenient for his M. service that the Judges upon their arrival to this town, should assemble together to every bench. A copy of Peacham's book, authentically collationed, is to be delivered: upon their resolution, which they will not deliver without advised deliberation, the Lords will with respectful care proceed as in duty shall become them for the honour of his M."

Supposing this letter to have been dispatched to Royston on Tuesday the 17th, the King's answer could hardly have arrived soon enough to enable the Council to issue the warrant for the next examination on Wednesday, if it had to be done by his direction. And as Winwood does not express himself as if he were waiting for directions, I should think it most likely that they agreed upon it among themselves. In the matter of consulting the Judges we know that the King did interfere with a suggestion of his own: but for that there was time enough.

person and government, and doth highly concern the service to have many things yet discovered touching the said book and the author thereof, wherein Peacham dealeth not so clearly as becometh an honest and loyal subject: These shall be therefore in his Majesty's name to will and require you and every of you to repair with what convenient diligence you may unto the Tower, and there to call before you the said Peacham, and to examine him strictly upon such interrogatories concerning the said book as you shall think fit and necessary for the manifestation of truth, and if you find him obstinate and perverse and not otherwise willing or ready to tell the truth, then to put him to the manacles, as in your discretion you shall see occasion. For which this shall be to you and every of you sufficient warrant.[1]

Up to this time there is no reason to suppose that Bacon had had anything whatever to do with the case, directly or indirectly. Whatever questions therefore may be raised as to the legality of this warrant, they cannot in any way touch him. For though he was one of the persons to whom it was directed, he was not a party to the issuing of it. The persons who are responsible for issuing it were the Archbishop of Canterbury, the Earl of Suffolk (now Lord Treasurer), the Duke of Lenox (Lord Steward), the Earl of Worcester (Lord Privy Seal), Lord Stanhope, Sir Ralph Winwood (principal Secretary of State), Sir Fulke Greville (Chancellor of the Exchequer), and Sir Julius Cæsar (Master of the Rolls). And on their behalf it is enough to say that had any question been raised as to their authority to issue it, the clerk of the Council could have settled it at once by producing a series of warrants extending through the whole of the three preceding reigns, and probably much further back, which proved beyond dispute, that during all that time it was an ordinary thing for the Council to authorize and direct the examination with torture of persons suspected of state-offences; and that the directions had always been given and acted upon without any symptom of misgiving as to their legality.[2]

Had the warrant been directed to the Learned Counsel alone, or

[1] S. P. Dom. James I., vol. lxxx. no. 6. Contemporary copy.

[2] See Jardine's 'Reading on the Use of Torture in the Criminal Law of England previously to the Commonwealth:' delivered in Michaelmas Term 1836, printed in 1837. How many precedents could then have been produced from the Council-books of James's reign, cannot be known; for the books are lost. But a warrant exactly similar, in a case exactly similar, had been directed to Coke and Fleming on the 20th of April 1603, a little before James's arrival in England; and the Council-books of Elizabeth's reign showed 38 cases at least: 1 in 1599, 3 in 1597, 4 in 1596, 1 in 1595, 3 in 1593, 1 in 1592, 2 in 1591, 1 in 1588, 1 in 1587, 3 in 1586, 1 in 1582, 6 in 1581, 3 in 1580, 1 in 1578, 2 in 1577, 1 in 1571, 2 in 1570, 1 in 1565, and 1 in 1559. Those of Mary contained 8 altogether, and those of Edward VI. 2. Against such an array of precedents, without any appearance of scruple or objection, it must have been vain to dispute the authority of the Council to issue such a warrant. Nor is there any reason to suppose that it was at that time called in question by

in conjunction with officers of inferior rank—as the similar warrant for the torturing of Philip May was, in April 1603, where Coke was the chief examiner—Bacon would have been answerable, though not for the order, yet for the manner in which it was executed. But this was not the case. The warrant was directed to Sir Ralph Winwood and Sir Julius Cæsar, who had themselves as Privy Councillors signed it, together with the Attorney and Solicitor General, the two King's Serjeants (Montagu and Crew), the Lieutenant of the Tower, and the Clerk of the Council;—that is, to the two Privy Councillors, with the Learned Counsel and the officials to assist them. In a commission so composed it was not possible for Bacon to control the proceedings, and therefore it would be unreasonable to hold him answerable for them. The report was drawn up by Winwood, by whom, as the man of highest official rank present, and one very confident of his own abilities, the proceedings were no doubt ordered and the examination conducted. A copy of it, taken from the original,[1] may be seen in Dalrymple's Memorials and Letters (ed. 1766), and runs thus:—

Interrogatories whereupon PEACHAM is to be examined.

Questions in general.

1. WHO procured you, moved you, or advised you, to put in writing these traiterous slanders which you have set down against his majesty's person and government, or any of them?

2. Who gave you any advertisement or intelligence touching those particulars which are contained in your writings; as touching the sale of the crown land, the deceits of the king's officers, the greatness of the king's gifts, his keeping divided courts, and the rest? and who hath conferred with you or discoursed with you concerning those points?

3. Whom have you made privy and acquainted with the said writings, or any part of them? and who hath been your helpers or confederates herein?

anybody. Indeed the fact that the commissions to the Presidents of the Provincial Council in Wales contained a clause authorizing the use of Torture in certain cases—a fact not noticed by Mr. Jardine (and two commissions containing that clause passed the hand of Coke as attorney-general)—would itself be conclusive evidence that the Crown lawyers of that day assumed the King in Council to possess the right of using it himself: for of course he could not legally depute a power which he did not legally possess. It is true, no doubt, as Coke discovered afterwards, that "there was no *law* to warrant tortures in England." But it is also true that the authority under which they were applied was not amenable to the Courts of law. As the House of Commons now assumes the right to commit any commoner to prison for what it judges to be contempt of its authority, so the Crown then assumed the right to put any commoner to torture for what it judged to be obstinacy in refusing to answer interrogatories. As the Judges cannot now call upon the House of Commons to justify the committal, so they could not then call upon the Crown to justify the torture.

[1] Balfour MSS., Advocates' Library, A. 1. 35.

4. What use meant you to make of the said writings? was it by preaching them in sermon, or by publishing them in treatise? If in sermon, at what time and in what place meant you to have preached them? If by treatise, to whom did you intend to dedicate or exhibit or deliver such treatise?

5. What was the reason, and to what end did you first set down in scattered papers, and after knit up in form of a treatise or sermon such a mass of treasonable slanders against the king, his posterity, and the whole state?

Questions in particular.

6. What moved you to write that the king might be strucken with death on the sudden, or within eight days, as Ananias or Nabal? Do you know of any conspiracy or danger to his person, or have you heard of any such attempt?

7. You have confessed that these things were applied to the king; and that, after the example of preachers and chronicles, kings infirmities are to be laid open. This sheweth plainly your use must be to publish them. Shew to whom, and in what manner?

8. What was the true time when you wrote the said writings, or any part of them? and what was the last time you looked upon them or perused them, before they were found or taken?

9. What moved you to make doubt whether the people will rise against the king for taxes and oppressions? Do you know, or have you heard of any likelihood or purpose of any tumults or commotion?

10. What moved you to write, that getting of the crown-land again would cost blood, and bring men to say, This is the heir, let us kill him? Do you know, or have you heard of any conspiracy or danger to the prince, for doubt of calling back the crown-land?

11. What moved you to prove that all the king's officers mought be put to the sword? Do you know, or have you heard if any petition is intended to be made against the king's council and officers, or any rising of people against them?

12. What moved you to say in your writings, That our king, before his coming to the kingdom, promised mercy and judgment, but we find neither? What promise do you mean of? and wherein hath the king broke the same promise?

Upon these interrogatories, Peacham this day was examined before torture, in torture, between tortures, and after torture. Notwithstanding, nothing could be drawn from him, he still persisting in his obstinate and insensible denials, and former answers.[1]

	RAPHE WINWOOD,	GERVASE HELWYSSE,
	JUL. CÆSAR,	RAN. CREWE,
	FR. BACON,	HENRY YELVERTON,
19 January 1614.	H. MOUNTAGUE,	FRA COTTINGTON.

[1] This last sentence is in the handwriting of Winwood. The interrogatories are in the hand of a copyist.

Bacon's signature of this report proves that he was present and allowed it to be accurate. Of the part he took in the examination all we know is that he was "not the principal examiner." I cannot find anything written, or reported to have been spoken by him, which would lead me to suppose that he either advised or approved the course that was followed, or expected any good from it. The use of torture, "in the highest cases of treason, for discovery"—that is, for the purpose of discovering accomplices or the like—he believed to be legal. An obstinate refusal to declare that which a man has no right to conceal he looked upon as a grave offence, less deserving of compassion perhaps than any other: and where he thought that the obstinacy could be overcome by being made painful, I can imagine him thinking it not only legal, but right, to apply the pain. But that he thought Peacham's case one in which such a process could be employed successfully, seems to me improbable. In that case the thing suspected was not definite enough, the grounds of suspicion were too vague and uncertain, the means of evasion were too many, to allow of the examinate being driven into a position in which he must choose between disclosing the secret and suffering the pain. Winwood, being more familiar with the French than the English procedure in such cases, might think it the best way. But Bacon had had too much experience of the working of the system in England not to foresee that no good would come of it in a case like this; for that the prisoner would only give such answers or make such confessions as might lead to delay; knowing that if it came to the worst he could retract everything that made against him, on the plea that it had been extorted by pain or fear; so that if the case were allowed to rest upon his confessions, it would break down when it came into Court. The precaution which he took to guard against this we shall see hereafter.

2.

In the mean time he addressed himself with great zeal to the preparation of the case against Peacham for the Judges and Jury. Whether this part of the proceeding had been advised by him or not, I do not know. But it had been resolved by the authorities to indict Peacham for treason; and in those anxious times, when so many doubtful questions were newly stirred, and the Crown was engaged in a struggle so critical, so full of immediate embarrassment, and upon the brink of issues so hazardous, it was of more than usual importance that it should be strengthened with the full authority of the law. Peacham's transgression was on the popular side. An ineffectual

attempt to punish it, especially if frustrated by the opposition of the *Judges*, would have been not only what was then considered a *dishonour* to the King, but a substantial damage to the royal authority. It would have been regarded by the opposite party as a victory. It was better to pass the offence by than attempt to punish it at the risk of a defeat; just as at this day no prudent government would prosecute a popular offender, however heinous, before a Jury predetermined to acquit him. The doubt was not about the fact, but about the law; and it was important, before proceeding further, to know what the Judges were likely to say to it. This, as we learn from Winwood's letter, had already been determined upon in Council. The Judges were to be consulted as soon as they arrived in London, and the Council would consider what should be done next, when they had heard their resolution.

If the Judges should take the same view of the case which the Council had done, all would be well. But Bacon appears to have apprehended a disagreement; in which event there would be a difficulty; for the case had gone too far to be dropped without giving a triumph to the disaffected.

In a letter to the King, written two days after the last examination of Peacham, and coming from his own collection, he reminded him of the danger which would arise from the betrayal at that crisis of any dissension between the Government and the Bench.

TO THE KING, CONCERNING PEACHAM'S CAUSE.[1]

It may please your excellent Majesty,

It grieveth me exceedingly that your Majesty should be so much troubled with this matter of Peacham, whose raging devil seemeth to be turned into a dumb devil. But although we are driven to make our way through questions, (which I wish were otherwise,) yet I hope well the end will be good. But then every man must put to his helping hand. For else I must say to your Majesty in this and the like cases, as St. Paul said to the centurion when some of the mariners had an eye to the cock-boat, *Except these stay in the ship ye cannot be safe.* I find in my Lords great and worthy care of the business: And for my part I hold my opinion, and am strengthened in it by some records that I have found. God preserve your Majesty.

Your Majesty's most humble

21 Jan., 1614. and devoted subject and servant.

[1] Gibson Papers, vol. viii. f. 11; fair copy.

In what way the King improved upon this hint, we shall see presently. In the mean time, not to break the order of chronology, I must dispose of two letters concerning a different matter, of which the proper place by rule of date is here, though the business is too obscure (for any light that I can throw upon it) to be of any interest.

3.

The King was now at Royston, and Bacon, when he had occasion to write to him, (having either neglected to cultivate or failed to establish confidential relations with any of the greater persons about the Court) used to entrust his letters to the care of his friend John Murray, of the Bedchamber, who was in constant attendance. This last was enclosed in one concerning some private business of Murray's own, the nature of which is very imperfectly explained. Some grant or patent, probably, which the King meant to bestow upon him, had met with some legal obstruction, for the removal of which it seems that the Judges of the Common Pleas were wished to take order; but of the point in question I know no more than may be gathered from the two letters which follow.

Sir Richard Cox, whose name is mentioned as in some way concerned, was one of the Masters of the Board of Green Cloth. It is not likely that the Judges of the Common Pleas could have had anything to do with a quarrel between him and Sir Thomas Erskine, which is said to have been "taken up and ended by the Lords of the Marshal's Court" above a week before.[1] But a man in his position may very well have been a party in Murray's business, whatever it was.

To his very loving friend Mr. John Murray of his Majesty's Bedchamber these.[2]

Mr. Murray,

I keep the same measure in a proportion with my master and with my friend; which is, that I will never deceive them in anything which is in my power; and when my power faileth my will, I am sorry. But your business goeth well. Monday is the day appointed for performing his Majesty's commandment: till then, I cannot tell what to advise you furder, except it should be this. That in case the Judges should refuse to take order in it them-

[1] Chamberlain to Carleton, 12 Jan. 1614-5.

[2] Balfour MSS.

selves, then you must think of some warrant to Mr. Secretary (who is your friend, and constant in the business) that he see forthwith his Majesty's commandment executed, touching the double lock; and, if need be, repair to the place and see by view the manner of keeping the seal; and take order, that there be no stay for working of the seal of justice, nor no prejudice to Killigrew's farm, nor to the duty of money paid to the Chief Justice. Whether this may require your presence, as you write, that yourself can best judge. But of this more, when we have received the Judges' answer. It is my duty, as much as in me is, to procure my master to be obeyed. I ever rest

Your friend loving and assured

FR. BACON.

21st Januar. 1614.

I pray deliver the enclosed letter to his Majesty.

TO THE SAME.[1]

Mr. Murray,

My Lord Chancellor yesterday,[2] in my presence, had before him the Judges of the Common Pleas, and hath performed his Majesty's royal commandments in a very worthy fashion, such as was fit for our master's greatness; and because the King may know it, I send you the inclosed. This seemeth to have wrought the effect desired; for presently I sent for Sir Richard Cox, and willed him to present himself to my lord Hubberd, and signify his readiness to attend. He came back to me; and told me all things went on. I know not what after-tricks may be; but I think this long chase is at an end. I ever rest

Your's assured,

FR. BACON.

25 Januar. 1614.

4.

The next letter brings us back to Peacham and to a passage in Bacon's professional career which has drawn upon him heavy censure in modern times. So large a part however of this censure rests upon a demonstrable misconception of facts, that I shall take the liberty of treating the case as one which has not been disposed of; and ask

[1] Balfour MSS.

[2] Tuesday, Jan. 24.

the reader in the first place to hear the story as I shall tell it. Of the truth of my narrative he will be able to judge for himself, as the whole of the evidence is contained in the papers which I shall have to lay before him.

Approving the resolution of the Council, as reported by Winwood (see note p. 91), the King determined to ascertain the opinion of the Judges on the point of law, before proceeding further. In this there was nothing unusual—nothing which anybody at that time would have dreamed of objecting to. In spite of some sweeping assertions to the contrary, it may be stated roundly that for the law officers of the Crown to consult with the Judges beforehand in doubtful cases about to be tried, was at that time the ordinary course of proceeding;—was so then and continued to be so long after. Nor is it necessary to spend words in proving it, because proofs enough will occur incidentally in the following correspondence to satisfy anybody. But in the course which the King proposed to pursue on this occasion there was one novelty which caused some trouble at the time, and though the history of it is quite simple, the motive quite intelligible, and the end (so far as I can see) quite innocent, has suffered extraordinary misinterpretation since. The King was himself persuaded that the case for the prosecution was good in law: but he wished to be sure that the Judges would take the same view of the case which he did. What he wanted, if we may judge of his intentions by his actions, was not to control their opinions, but to know what they were. Experience however had taught him that it was not an easy thing to obtain the opinions of the other Judges when Coke was among them, who so overcrowed them by the weight of his reputation, the overwhelming resources of his legal erudition, his mastery in law-logic whereby he could turn the edge of the law which way he pleased, and above all by sheer strength of will, that they had no opinions of their own: and James, being by this time no contemptible lawyer himself, and knowing very well that Coke, however overwhelming, was far from infallible, had a mind to know what the others would think when they had no prompter. Accordingly, he desired to have their opinions taken separately, each answering for himself without any communication with his fellows.

This, from all I can collect, was entirely his own device and was first intimated in a letter to the Council giving express directions that it should be done. The letter was read at the Council Table, when Coke was present, on the 27th of January. What followed, Bacon's report written the same evening will best tell.

A LETTER TO THE KING, TOUCHING PEACHAM'S CAUSE.[1]

It may please your excellent Majesty,

This day in the afternoon was read your Majesty's letters of direction touching Peacham; which because it concerneth properly the duty of my place, I thought it fit for me to give your Majesty both[2] a speedy and a private account thereof; that your Majesty knowing things clearly how they pass,[3] may have the true fruit of your own wisdom and clear-seeing judgment in governing the business.

First, for the regularity which your Majesty (as a master in business of estate)[4] doth prudently prescribe in examining and taking examinations, I subscribe to it; only I will say for myself, that I was not at this time the principal examiner.

For the course your Majesty directeth and commandeth for the feeling of the Judges of the King's Bench their several opinions, by distributing ourselves and enjoining secrecy, we did first find an encounter in the opinion of my Lord Coke, who seemed to affirm that such particular and (as he called it) *auricular* taking of opinions was not according to the custom of this realm; and[5] seemed to divine that his brethren would never do it. But when I replied that it was our duty to pursue your Majesty's directions, and it were not amiss for his Lordship to leave his brethren to their own answers; it was so concluded: and his Lordship did desire that I mought confer with himself; and Mr. Serjeant Montague was named to speak with Justice Crooke; Mr. Serjeant Crew with Justice Haughton; and Mr. Solicitor with Justice Dodderidge. This done, I took my fellows aside, and advised that they should presently speak with the three Judges, before I[6] could speak with my Lord Coke, for doubt of infusion; and that they should not in any case make any doubt to the Judges, as if they mistrusted they would not deliver any opinion apart, but speak resolutely to them, and only make their coming to be, to know what time they would appoint to be attended with the papers. This sorted not amiss; for Mr. Solicitor came to me this evening, and related to me that he had found Judge Dodderidge very ready to give opinion in secret; and fell upon the same reason which upon your Majesty's

[1] Add. MSS. 5503, f. 53 (A); Resuscitatio, p. 48 (R). [2] *backe*: A.
[3] *passed*: A. [4] *as a master of business*: A. [5] *and he*: A. [6] *they*: A.

first letter I had used to my Lord Coke at the council-table: which was, that every Judge was bound expressly by his oath to give your Majesty counsel when he was called; and whether he should do it jointly or severally, that rested in your Majesty's good pleasure, as you would require it. And though the ordinary course was to assemble them, yet there mought intervene cases wherein the other course was more convenient. The like answer made Justice Crooke. Justice Haughton (who is a soft man) seemed desirous first to confer; alleging that the other three Judges had all served the crown before they were Judges, but that he had not been much acquainted with business of this nature.

We purpose therefore forthwith[1] they shall be made acquainted with the papers; and if that could be done as suddenly as this was, I should make small doubt of their opinions: and howsoever, I hope force of law and precedent will bind them to the truth: neither am I wholly out of hope, that my Lord Coke himself, when I have in some dark manner put him in doubt that he shall be left alone, will not continue singular.

For Owen, I know not the reason why there should have been no mention made thereof in the[2] last advertisement: for I must say for myself that I have lost no moment of time in it, as my Lord of Canterbury can bear me witness. For having received from my Lord an additional of great importance; which was, that Owen of his own accord after examination should compare the case of your Majesty (if you were excommunicate) to the case of a prisoner condemned at the bar, which additional was subscribed by one witness; but yet I perceived it was spoken aloud, and in the hearing of others: I presently sent down a copy thereof, which is now come up, attested with the hands of three more, lest there should have been any scruple of *singularis testis*. So as for this case I may say, *omnia parata;* and we expect but a direction from your Majesty for the acquainting the Judges[3] severally; or the four Judges[4] of the King's Bench, as your Majesty shall think good.

I forget not, nor forslow not, your Majesty's commandment touching Recusants; of which, when it is ripe, I will give your Majesty a true account, and what is possible to be done, and where the impediment is. Mr. Secretary bringeth *bonam volun-*

[1] *that forthwith:* A. [2] *that:* A. [3] *with it:* A. [4] om. A.

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tatem, but he is not versed much in these things: and sometimes urgeth the conclusion without the premises, and by haste hindereth. It is my Lord Treasurer, and the Exchequer must help it, if it be holpen.[1] I have heard more ways than one, of an offer of 20,000*l. per annum,* for farming the penalties of recusants, not including any offence capital or of *præmunire*;[2] wherein I will presume to say, that my poor endeavours, since I was by your great and sole grace your Attorney, have been no small spurs to make them feel your laws, and seek this redemption; wherein I must also say, my Lord Coke hath done his part: and I do assure your Majesty, I know it somewhat inwardly and groundedly, that by the courses we have taken they conform daily and in great numbers. And[3] I would to God it were as well a conversion as a conformity: but if it should be[4] by dispensation or dissimulation, then I fear that whereas your Majesty hath now[5] so many ill subjects poor and detected, you shall then have them rich and dissembled. And therefore I hold this offer very considerable, of so great an increase of revenue: if it can pass the fiery trial of religion and honour, which[6] I wish all projects may pass.

Thus, in as much as I have made to your Majesty somewhat a naked and particular account of business, I hope your Majesty will use it accordingly. God preserve your Majesty.

Your Majesty's most humble
and devoted subject and servant,
FR. BACON.

This Friday late at
night, 27 Janu. 1614.[7]

From the first four paragraphs of this letter we learn distinctly what the proposed innovation really was. A case in law was to be submitted to each of the Judges of the King's Bench. Each was to be asked his personal opinion whether a specified offence amounted to treason. There was to be no attempt to deceive, or overbear, or otherwise deal unfairly with his judgment. The grounds of the indictment, with the records and precedents upon which it was justified, were to be laid before him, and his opinion was to be asked whether such an indictment would be good and sufficient in law,—whether, in short, it was a case fit to go into Court with. No time was limited for the answer. No form of answer was prescribed.

[1] *to be helped:* A. [2] *or præmunire:* A. [3] om. A.
[4] *die:* R. [5] om. A. [6] *through which:* A.
[7] So A. R merely gives the date at the head of the letter.

The only thing insisted on was that each should answer for himself, without consulting the others, the same question which, had they been assembled in conference, would have been entertained and answered by them all as a matter of course. If a majority of them, so consulted, had answered no, the prosecution (I imagine) would have been dropped.

Now, unless the Judges had a right to be treated as a *party* in the State with a collective conscience, I do not clearly see upon what ground they should object to be so consulted. They could not say that they were individually incompetent to form an opinion on such a question without taking advice in common; for that was the very thing they had to do in the ordinary discharge of their duties. Peacham's offence had been committed in Somersetshire. In ordinary course, he would be tried at Taunton before the two Judges who rode the Western Circuit. Those Judges would have to explain the law to the Jury without waiting to consult their fellows. If they did not shrink from the responsibility of declaring their opinion in Court, when it would be a judicial decision and direction carrying life and death, why should they shrink from the responsibility of declaring it to the King, when it would be merely an opinion given for his information, and would determine nothing except whether the trial should proceed or not?

That by answering the King's question they would commit themselves to an opinion formed upon an *ex parte* statement, *might* indeed have been justly urged as a reason for objecting to answer,—if they were themselves to try the case.[1] But that objection would have applied to an opinion given by the *assembled* Judges quite as strongly as to one given by each of them separately. And it was not the objection which was really taken; being indeed a discovery of later date, which had not yet occurred to anybody—not even to Coke himself, who was always too ready to give his opinion upon cases which he was himself to try, before they had been half heard; and whose objection in this case to the "auricular" taking of opinions had nothing to do with it. That the "auricular" proceeding, if it had become a regular practice, would have tended to weaken the authority of the Judges as a body, by depriving them of the strength derived from united action and apparent unanimity of opinion, and would have thereby retarded the process by which they were gradually becoming independent of the Crown, is not to be denied; and

[1] The Judges by whom Peacham was to be tried were not (as Mr. Gardiner has pointed out) among those whose opinion was in this case required. But that was probably an accident. If he had been tried in the King's Bench I have no reason to think that a different course would have been taken. The Judges of the King's Bench were consulted as the highest authority upon criminal law.

as it is natural for all bodies to struggle after their own independence, it was natural that the Judges, and especially Coke, should dislike it. But the King also had his independence to look after; and if he suspected a combination of the Judges to clip his wings, it was natural that he too should use what powers he had left to break it. By taking the opinion of each separately, he could at least prevent any one among them from dictating the opinions of the rest, and at a time when he certainly had the right to remove any one of them at pleasure from his office, it would be difficult to maintain that he had not the right to ask for his opinion upon a point of law.

Of the other subjects referred to in this letter, the case of Owen will come before us presently in full detail. His offence was much like that of William Talbot,[1]—the utterance of a treasonable opinion only deeper; inasmuch as he avowed it more distinctly and put it forth more deliberately.

What the King's "commandment touching Recusants" was, I have not succeeded in making out. It seems to have had something to do with the fines for recusancy; and from the allusion to "the Lord Treasurer and the Exchequer" as the only means of remedy, we may perhaps conjecture that the object was to prevent those fines from being absorbed by intermediate agents on their way to the royal coffers: which must have been the case to a great extent, if £20,000 could be offered for farming them, while the sums actually received by the Crown did not amount to £9000.[2] But the notable thing in the paragraph (which is otherwise too obscure to build inferences on) is Bacon's implied opinion as to the policy of enforcing these penalties. A more stringent proceeding had made recusants "*conform* in great numbers," but as it could not be hoped that it had *converted* them, the only effect was the removal of the mark by which the disloyal subjects were distinguished. While the penalty was moderate, the recusant in heart was a recusant in deed. Make it intolerable, and it would be evaded by a general "dispensation or dissimulation," and there would be no means of knowing who was and who was not at heart a recusant.

5.

It was about this time probably that the King endeavoured to assist his Council in their debate with the Judges, by setting forth his own view of the case against Peacham. The following paper,

[1] See above, p. 5.

[2] Gardiner, ii. p. 414.

published in 'Dalrymple's Memorials' from a manuscript said to be in the King's own handwriting, is important, as containing some evidence from which we may partly infer the character of the libel. The interrogatories upon which Peacham had been examined inform us of the subjects which it treated of, but of the spirit in which they were handled we have no better means of judging, so far as I am aware, than by their effect upon the King's feelings; from which I think, after making all reasonable allowance for the infirmities of the royal temper, we may infer that it was an unusually strong specimen of licentious writing against the Government,—such as, if it had been directed against the House of Commons instead of the King, would not in those days have been thought legitimate.

THE TRUE STATE OF THE QUESTION, WHETHER PEACHAM'S CASE BE TREASON OR NOT.[1]

THE indictment is grounded upon the statute of Edward the third, that he compassed and imagined the king's death; the indictment then is according to the law, and justly founded; but how is it verified? First, then, I gather this conclusion, that since the indictment is made according to the prescription of law, the process is formal, the law is fulfilled, and the judge and jury are only to hearken to the verification of the hypothesis, and whether the minor be well proved or not.

That his writing of this libel is an overt act, the judges themselves do confess; that it was made fit for publication, the form of it bewrays the self; that he kept not these papers in a secret and safe façon, but in an open house and lidless cask, both himself and the messenger do confess; nay, himself confesseth, that he wrote them at the desire of another man, to whom he should have shown them when they had been perfected, and who craved an account for them, which, though it be denied by the other party, worketh sufficiently against the deponer himself. Nay, he confesses, that in the end he meant to preach it; and though, for diminishing of his fault, he alledges, that he meant first to have taken all the bitterness out of it, that excuse is altogether absurd, for there is no other stuff in, or through it all, but bitterness, which being taken out, it must be a quintessence of an alchimy spirit, without a body, or Popish accidents without substance; and then to what end would he have published such a ghost, or shadow without substance; *cui bono;* and to what end did he so farce it first with venom, only to scrape it out again; but it had been hard making that sermon to have tasted well, that was once so spiced, *quo semel est imbuta recens, etc.* But yet this very excuse is by himself overthrown again, confessing, that he meant to retain some of the most crafty malicious parts in it, as, etc. [So the MS.]

The only question that remains then is, whether it may be verified and

[1] 'Sir David Dalrymple's Memorials,' p. 61.

proved, that, by the publishing of this sermon, or rather libel of his, he compassed or imagined the king's death? which I prove he did, by this reason; had he compiled a sermon upon any other ground, or stuffed the bulk of it with any other matter, and only powdered it, here and there, with some passages of reprehension of the king; or had he never so bitterly railed against the king, and upbraided him of any two or three, though monstrous vices, it might yet have been some way excusable; or yet had he spewed forth all the venom that is in this libel of his, in a railing speech, either in drunkenness, or upon the occasion of any sudden passion or discontentment, it might likewise have been excused in some sort; but, upon the one part, to heap up all the injuries that the hearts of men, or malice of the devil, can invent against the king, to disable him, utterly, not to be a king, not to be a Christian, not to be a man, or a reasonable creature, not worthy of breath here, nor salvation hereafter; and, upon the other part, not to do this hastily or rashly, but after long premeditation, first having made collections in scattered papers, and then reduced it to a method, in a formal treatise, a text chosen for the purpose, a prayer premitted, applying all his wits to bring out of that text what he could, *in malam partem*, against the king—This, I say, is a plain proof that he intended to compass or imagine, by this means, the king's destruction. For, will ye look upon the person or quality of the man, it was the far likeliest means he could use to bring his wicked intention to pass; his person an old, unable and unweildy man; his quality a minister, a preacher, and that in so remote a part of the country, as he had no more means of access to the king's person, than he had ability of body, or resolution of spirit, to act such a desperate attempt with his own hands upon him; and therefore, as every creature is ablest, in their own element, either to defend themselves, or annoy their adversaries, as [birds] in the air, fishes in the waters, and so forth, what so ready and natural means had he whereby to annoy the king as by publishing such a seditious libel, and so, under the specious pretext of conscience, to inflame the hearts of the people against him. Now, here is no illation nor inference made upon the statute; it stands *in puris naturalibus*, but only a just inference and probation of the guilty intention of this party. So the only thing the judges can doubt of, is of the delinquent's intention; and then the question will be, whether if[1] these reasons be stronger to enforce the guiltiness of his intention, or his bare denial to clear him, since nature teaches every man to defend his life as long as he may; and whether, in case there were a doubt herein, the judges should not rather incline to that side wherein all probability lies: but if judges will needs trust better the bare negative of an infamous delinquent, without expressing what other end he could probably have, than all the probabilities, or rather infallible consequences upon the other part, caring more for the safety of such a monster, than the preservation of a crown, in all ages following, whereupon depend the lives of many millions; happy then are all desperate and seditious knaves, but the fortune of this crown is more than miserable. *Quod Deus avertat.*

[1] So printed. The "if" ought apparently to be struck out.

Bacon in the mean time held his conference with Coke according to appointment, and on the 31st of January reported the result in the following letter; which comes from his own collection.

To the King, giving him an account of Peacham's business, and some others.[1]

It may please your excellent Majesty,

I received this morning by Mr. Murray a message from your Majesty of some warrant and confidence, that I should advertise your Majesty of your business wherein I had part: wherein I am first humbly to thank your Majesty for[2] your good acceptation of my endeavours and service, which I am not able to furnish with any other quality save faith and diligence.

For Peacham's case, I have since my last letter been with my Lord Coke twice; once before Mr. Secretary's going down to your Majesty, and once since, which was yesterday; at the former of which times I delivered him Peacham's papers, and at this latter the precedents which I had with care gathered and selected: for these degrees and order the business required.

At the former I told him that he knew my errand, which stood upon two points, the one to inform him of the particular case of Peacham's treasons, (for I never gave it other word to him), the other to receive his opinion to myself, and in secret, according to my commission from your Majesty.

At the former time he fell upon the same allegation which he had begun at the council-table; that Judges were not to give opinion by fractions, but entirely according to the vote whereupon they should settle upon conference; and that this auricular taking of opinions, single and apart, was new and dangerous; and other words more vehement than I repeat.

I replied in civil and plain terms, that I wished his Lordship in my love to him to think better of it; for that this that his Lordship was pleased to put into great words, seemed to me and my fellows, when we spake of it amongst ourselves, a reasonable and familiar matter; for a king to consult with his judges, either assembled or selected, or one by one. And then to give him a little out-let to save his first opinion (wherewith he is most com-

[1] Gibson Papers, vol. viii. f. 12. Fair copy.

[2] *of* in MS.

monly in love) I added that judges sometimes might make a suit to be spared for their opinion, till they had spoken with their brethren; but if the King upon his own princely judgment, for reason of estate, should think it fit to have it otherwise, and should so demand it, there was no declining: nay that it touched upon a violation of their oath, which was to counsel the King; without distinction whether it were jointly or severally. Hereupon, I put him the case of the privy council, as if your Majesty should be pleased to command any of them to deliver their opinion apart and in private; whether it were a good answer, to deny it otherwise than if it were propounded at the table. To this he said that the cases were not like; because this concerned life; to which I replied, that questions of estate might concern thousands of lives, and many things more precious than the life of a particular, as war and peace and the like.

To conclude, his Lordship, *tanquam exitum quærens*, desired me for the time to leave with him the papers, without pressing him to consent to deliver a private opinion, till he had perused them; I said I would, and the more willingly, because I thought his Lordship, upon due consideration of the papers, would find the case to be so clear a case of treason, as he would make no difficulty to deliver his opinion in private; and so I was persuaded of the rest of the Judges of the King's Bench; who likewise (as I partly understood) made no scruple to deliver their opinion in private. Whereunto he said (which I noted well) that his brethren were wise men, and that they might make a shew as if they would give an opinion as was required; but the end would be, that it would come to this; they would say they doubted of it, and so pray advice with the rest. But to this I answered, that I was sorry to hear him say so much; lest if it came so to pass, some that loved him not might make a construction, that that which he had foretold, he had wrought. Thus your Majesty seeth that as Salomon saith *Gressus nolentis tanquam in sepi spinarum.* It catcheth upon every thing.

The latter meeting is yet of more importance. For then coming armed with divers precedents, I thought to set in, with the best strength I could. And said, that before I descended to the record, I would break the case to him thus:

That it was true we were to proceed upon the ancient statute

of 25° of king Edward the third, because other temporary statutes were gone. And therefore it must be laid in the indictment, *Imaginatus est et compassavit mortem et finalem destructionem domini regis.* Then must the particular treasons follow in this manner, viz: *Et quod ad perimplendum nefandum propositum suum prædictum composuit et conscripsit quendam detestabilem et venenosum libellum sive scriptum in quo inter alia proditoria continetur, etc.*, and then the principal passages of treason taken forth of the papers are to be entered in *hæc verba;* and with a conclusion in the end, *ad intentionem quod ligeus populus et veri subditi domini regis cordialem suum amorem à domino rege retraherent, et ipsum dominum regem relinquerent et guerram et insurrectionem contra eum levarent et facerent, etc.* (I have in this form followed the ancient stile of the indictments for brevity sake, though when we come to the business itself, we shall enlarge it according to the use of the later times.) This I represented to him (being a thing he is well acquainted with) that he might perceive the platform of that was intended, without any mistaking or obscurity. But then I fell to the matter itself to lock him in as much as I could,[1] viz:

That there be four means or manners, whereby the death of the king is compassed and imagined.

The first by some particular fact or plot.

The second by disabling his title; as by affirming that he is not lawful king, or that another ought to be king, or that he is an usurper, or a bastard, or the like.

The third by subjecting his title; as either to pope or people; and thereby making him of an absolute king a conditional king.

The fourth, by disabling his regiment, and making him appear to be incapable or indign to reign.

These things I relate to your Majesty in sum as is fit: which when I opened to my Lord, I did insist a little more upon, with more efficacy and edge and authority of law and record than I can now express.[2]

Then I placed Peacham's treason within the last division, agreeable to divers precedents, whereof I had the records ready;

[1] So in the Lambeth copy. The copy in Add. MSS. 5503, and another in Lansd. MSS. 238, give "and to lock him in as much as I could, said."

[2] In Add. MSS. 19,402, f. 89, the last sheet of the original letter is preserved: which begins here, and the rest is corrected from it. It agrees exactly with the Lambeth copy.

and concluded,—that your Majesty's safety and life and authority was thus by law inscansed and quartered; and that it was in vain to fortify on three of the sides, and to leave you open on the fourth.

It is true he heard me in a grave fashion, more than accustomed, and took a pen and took notes of my divisions; and when he read the precedents and records, would say, this you mean falleth within your first, or your second, &c., division.

In the end I expressly demanded his opinion, as that whereto both he and I was enjoined. But he desired me to leave the precedents with him, that he mought advise upon them. I told him, the rest of my fellows would dispatch their part, and I should be behind with mine; which I persuaded myself your Majesty would impute rather to his backwardness than my negligence. He said, as soon as I should understand that the rest were ready, he would not be long after with his opinion or answer.

For St. Johns, your Majesty knoweth the day draweth on; and my Lord Chancellor's recovery the season and his age promiseth not to be hasty. I spake with him on Sunday, at what time I found him in bed, but his spirits strong and not spent or wearied, and spake wholly of your business leading me from one matter to another, and wished and seemed to hope, that he mought attend the day for St. Johns, and it were (as he said) to be his last work to conclude his services, and express his affection, towards your Majesty. I presumed to say to him, that I knew your Majesty would be exceeding desirous of his being present that day, so as that it mought be without prejudice to his continuance; but that otherwise your Majesty esteemed a servant more than a service, specially such a servant. Surely in my opinion your Majesty were better put off the day than want his presence, considering the cause of the putting off is so notorious, and then the capital and the criminal may come together the next term.

I have not been unprofitable in helping to discover and examine within these few days a late Patent by surreption obtained from your Majesty, of the greatest forest of England, worth 30,000*l.* under colour of a defective title for a matter of 400*l.* The person must be named, because the patent must be questioned; it is a great person, my lord of Shrewsbury; or rather,

as I think, a greater than he, which is my lady of Shrewsbury. But I humbly pray your Majesty to know this first from my Lord Treasurer, who methinketh groweth even studious in your business. God preserve your Majesty.

Your Majesty's most humble
and devoted subject and servant,
FR. BACON.

The rather in regard to Mr. Murray's absence, I humbly pray your Majesty to have a little regard to this letter.

31 Januar. 1614.

St. John was a gentleman of Marlborough, who being applied to for a contribution to the voluntary oblation (which, in spite of Bacon's caution,[1] could not help being called the "Benevolence") had replied in a style for which it was thought fit to call him to account in the Star Chamber. He had been apprehended and committed to prison about the beginning of the year, and the case was to have come on for hearing in Hilary Term, but upon the consideration suggested by Bacon in this letter, was put off till the term following. Ellesmere was so seriously ill, that it was doubtful whether he would be able to attend in the Star Chamber on the day appointed; and as the part which Coke had taken in Council concerning the Benevolence made it doubtful what view he might take of the case, it was thought that the Lord Chancellor's help, about whose opinion there was no doubt, could not be well spared. Bacon had seen him two days before, and had begun a letter to the King on the state of his health, which seems to have been delayed by an accident, and (more matter turning up in the interval) to have been entirely rewritten in the form which we have just seen. The beginning of the unfinished letter remains however among the papers at Lambeth, and appears to be, not a draught, but a fair copy in his own hand; very fair, as far as it goes; but ending abruptly in the middle of a line at the bottom of the first page; on the other side of which are some lines crossed out; as if he had written so far, and found on turning over that he had been writing on a pre-occupied sheet. However that may be, his report of the Lord Chancellor's condition is substantially (almost verbally) the same as that in the penultimate paragraph of the letter last given, and was meant probably to introduce the same suggestion with which that paragraph ends. It was printed by Rawley in the Resuscitatio, and is to be found in the manuscript

[1] See above, p. 81.

collection of letters in the British Museum (Additional MSS. 5503), but is here taken from the original at Lambeth.

TO THE KING, REPORTING THE STATE OF LORD CHANCELLOR ELLESMERE'S HEALTH.[1]

It may please your excellent Majesty,

Because I know your Majesty would be glad to hear how it is with my Lord Chancellor; and that it pleased him out of his ancient and great love to me, which many times in sickness appeareth most, to admit me to a great deal of speech with him this afternoon, which during these three days he hath scarcely done to any, I thought it mought be pleasing to your Majesty to certify you how I found him. I found him in bed, but his spirits fresh and good, speaking stoutly, and without being spent or weary, and both willing and beginning of himself to speak, but wholly of your Majesty's business, wherein I cannot forget to relate this particular; That he wished that his sentencing of St. Johns at the day appointed mought be his last work, to conclude his services and express his affection towards your Majesty. I told him I knew your Majesty would be very desirous of his presence that day, so it mought be without prejudice to his continuance, but otherwise your Majesty esteemed a servant more than a service, specially such a servant. Not to trouble your Majesty, though good spirits in sickness be uncertain kalendars, yet I have very good comfort of him, and I hope by that day

Here the letter breaks off in the middle of the line. On the other side are the following words, with a line drawn through them:—

For that which is done for Peacham, it is in effect the same which I wrote to your Majesty by my former letter, save that we made report this day of as much to my Lords, which Mr. Secretary will relate to your Majesty.

The King acted upon Bacon's suggestion, and sent word to Ellesmere not to exert himself to attend in the Star Chamber on the day appointed for St. John's cause, which appears to have been Friday, the 10th of February. Whereupon counsel was taken, and it was settled that it should be put off till the next term; as we learn from the following letter.

[1] Gibson Papers, vol. viii. f. 10.

To the King, touching my Lord Chancellor's amendment, and the putting off S^r John's cause. Feb. 7, 1614.[1]

It may please your excellent Majesty,

My Lord Chancellor sent for me to speak with me this morning,[2] about eight of the clock. I perceive he hath now that *signum sanitatis*, as to feel better his former weakness: for it is true, I did a little mistrust that it was but a boutade of desire and good spirit, when he promised himself strength for Friday,[3] though I was won and carried with it. But now I find him well inclined to use, should I say your liberty or rather your interdict, signified by Mr. Secretary from your Majesty. His Lordship shewed me also your own letter, whereof he had told me before, but had not shewed it me. What shall I say? I do much admire your goodness for writing such a letter at such a time.

He had sent also to my Lord Treasurer, to desire him to come to him about that time. His Lordship came; and, not to trouble your Majesty with circumstances, both their Lordships concluded (myself present and concurring) that it could be no prejudice to your Majesty's service to put off the day for St. John[4] till the next term: the rather, because there are seven of your[5] privy-council (who[6] are at the least *numerus* and part of the court) who are by infirmity like to be absent; that is, my Lord Chancellor, my Lord Admiral, my Lord of Shrewsbury, my Lord of Exeter, my Lord Zouch, my Lord Stanhope, and Mr. Chancellor of the Duchy; wherefore they agreed to hold a council to-morrow in the afternoon for that purpose.[7]

It is true, I[8] was always of opinion that it was no time lost; and I do think so the rather, because I could be content that the matter of Peacham were first settled and put to a point. For there be perchance that would make the example upon St. John to stand for all. For Peacham, I expect some account from my fellows this day; if it should fall out otherwise than I

[1] Add. MSS. 5503. Resuscitatio, p. 54.
[2] The 7th of February was a Tuesday.
[3] Friday was the day, when the trial of St. John should have come on.
[4] *J. S.*: R. And so throughout. [5] *the*: A. [6] *which*: R.
[7] The Council was held accordingly, and wrote a letter to the King suggesting the postponement. See S. P. Dom. James I., 8 Feb. 1614. [8] *that I*: R.

hope,[1] it may not be left so. Your Majesty, in your last[2] letter, very wisely put in a disjunctive, that the Judges should deliver an opinion privately, either to my Lord Chancellor or to ourselves distributed:[3] his sickness made the latter way to be taken: but the other may be reserved with some accommodating,[4] when we see the success of the former.

I am appointed this day to attend my Lord Treasurer for a proposition of raising profit and revenue by infranchising copyholders.[5] I am right glad to see the patrimonial part of your revenue well looked into, as well as the fiscal: and I hope it will be so in other parts as well as this. God preserve your Majesty.

Your Majesty's most humble
and devoted subject and servant.

6.

We have seen that the preparations for the case against Owen were complete more than a week ago, and Bacon was only waiting for the King's direction to acquaint the Judges with it; a form without which (as I should infer from the terms) the proceeding would hardly have been considered regular. In sending the required directions the King left it to Bacon's choice whether their opinions should be taken severally and apart (as "prescribed" in the case of Peacham) or in conference with all together. Bacon, who does not appear to have been ever personally in favour of the "auricular" plan, being now left to his discretion, chose the other. The four Judges of the King's Bench met the members of the King's learned counsel in Coke's chambers, heard the charge and the proofs, and desired that the examinations and papers should be left with them for a while to be considered: Coke making no objection at all, but offering an opinion of his own upon the case of Owen at once, and when the conference was over, promising that his private opinion upon the case of Peacham should be ready very soon.

It is impossible, I think, to read the next letter, in which all this is related, and believe that an extrajudicial consultation of this kind with the *assembled* Judges was considered to be at all out of order. But since Coke himself has the credit of having first laid down the doctrine that "The Judges ought not to deliver their opinions beforehand of any criminal case which may come before them judicially,"

[1] *otherwise then I hope, it,* etc.: A. *otherwise, then, I hope, it,* etc.: R.
[2] *first:* A. [3] *distributively:* A. [4] *upon some accommodation:* A.
[5] *Copyholds:* A.

I may be called on to reconcile that fact with his acquiescence in the practice at this time. The thing is not difficult, if it be remembered that his opinions, though not to be shaken by argument, were apt to vary considerably with his point of view. As soon as he was made a Judge, he became aware of limitations to the Royal Prerogative which he would never have found out while he was Attorney-General. As soon as he ceased to be a Judge and became a popular leader in the House of Commons, he began to see that the impartiality of the Bench needed for its protection cautions and restraints of which he never felt the want while he sat on it himself. The doctrine in question was a growth of this later stage in his career. He thought of it while he was writing his Institutes, and I believe we may see the very passage where it came into his head. It is a passage worth examining carefully; for it contains in itself a history of the changes through which his mind passed on the way to that important conclusion.

He was explaining the process of trial for petty treason; and coming to the rule which prohibits the prisoner from the aid of counsel to conduct his defence and answer the prosecutor, it occurred to him that the reader might wish to know by what reason such a rule could be justified: for the reason was not self-evident, and yet a reason there must be, or how could it be law? And the first reason he hits upon, after noticing one or two other explanations only to put them aside, is this. "The true reason" (he says) "is that the testimonies and proofs of the offence ought to be so clear and manifest, as there can be no defence to it:" an idea very characteristic of the man, which I can well fancy him to have entertained and acted upon, so long as he was himself either prosecutor or judge, with perfect satisfaction; the notion that anything to the purpose *could* be said against the side which he was on, being one that his mind could never take. But now that he was considering the question in general,—not as in a proceeding which he had any part in himself, but regarding it as a jurist, and imagining the case of a prisoner charged by an Attorney-General who might be wrong before a Judge who might be precipitate,—when he saw the rule and the reason of the rule lying side by side on his paper, he seems to have felt that it was not quite satisfactory. And well he might. The prisoner has heard for the first time the charge and the evidence against him. It has been got up by practised lawyers, with every advantage of skill, time, scope, and money. He, an unlearned, possibly an uneducated man, who has all the time been shut up in ignorance and without advice, must make his defence for himself *ex tempore*. He may not even have the aid of a practised lawyer to answer the practised lawyer who

has set forth the evidence against him: Is not that unfair? No, says Coke, because the proofs against him *ought to be* so clear that he can have no defence to make! In other words, no man *ought* to be prosecuted except upon proof so absolute, that the prosecutor, without hearing what he has to say in answer, may be *sure* that nothing he can say will shake it. It was a doctrine which could only be defended from the prosecutor's point of view, from which Coke was no longer looking. Casting about therefore for a better justification of the rule of law, he falls upon the notion that "the Court ought to be instead of counsel to the prisoner,—to see that nothing be urged against him contrary to law and right;" or, as he expresses it rather more fully in another place, "the Court ought to see that the indictment, trial, and other proceedings be good and sufficient in law, otherwise they should by their erroneous judgment attaint the prisoner unjustly." With his own former practice in his mind, he could not go so far as to say that the Court ought to act as the prisoner's *advocate*, without which the justification of the rule is obviously imperfect: for in the case of an innocent man, the question of guilty or not guilty turns not upon the legality of the proceedings, but upon the evidence of the fact; and the hardship for the prisoner is, that he must contend under every disadvantage, and without any help, to remove the impression produced upon his triers by an array of evidence collected, arranged, and set forth against him with every advantage. But having come to the conclusion that the Judge ought to see that the prisoner has fair play as far as the law is concerned (which was a great step in advance), it further occurred to him as a corollary that the Judge ought to be in an impartial frame of mind; therefore not to come with a judgment forestalled. "And to the end that the trial may be more indifferent, seeing that the safety of the prisoner consisteth in the indifferency of the Court, the Judges ought not to deliver their opinions beforehand of any criminal case which may come before them judicially." And thus he arrives at last, much to his honour, at that just conclusion, which to suppose that he had arrived at in 1615 would not be to his honour at all: as we shall hereafter see. That it was a *new* doctrine and *not* according to the customs of the realm is the very merit of it; and the very next sentence, though intended to prove that it was not new, proves to me that it was. In law, reason is nothing without precedent. If the doctrine just laid down was true, there must, according to Coke's habits of thinking, have been precedents to establish it; and for a precedent he looks about. Now, had the attempt to forestall a Judge's opinion "upon a case put and proofs urged on one side in the absence of the party accused" been an *innovation* in

the year 1615, a thing "of new and dangerous tendency, and not according to the customs of the realm," surely Coke, who had been Attorney-General from 1594 to 1606, Chief Justice of the King's Bench from 1613 to 1616, and an active Privy Councillor with only a year's intermission from 1613 to 1620,—whose whole life had been spent in the search and study of records, authorities, and year books,—could not have been much at a loss for a precedent. If it had not been the custom to consult Judges out of Court, he must have known it: if Judges when so consulted had ever upon that or any other ground refused to answer, he must have known that; if any judicial decision had been pronounced, or any eminent author had given an opinion to that effect, Coke was the man to quote it. Yet he is obliged to go back as far as the year 1486 before he can find a case which even seems fit for his purpose. "We read (he proceeds) that in the case of Humphrey Stafford, that arch-traitor, Hussey, Chief Justice, besought King Henry VII. that he would not desire to know their opinions beforehand for Humphrey Stafford, for they thought it would come before them in the King's Bench judicially, and then they would do that which of right they ought; and the King accepted of it." Unless he could have added that *since* that time the Judges had never been asked for their opinions beforehand, he had better have rested upon his reason and gone without his precedent. For otherwise we may more probably infer that for the last 150 years no judge had *refused* to give an opinion beforehand, than that none had been asked. Occasions must have been occurring continually: and if in such a case any practice is to be held constitutional of which a solitary precedent can be produced within the century and half last past, what practice can be proved unconstitutional? But in this case that solitary precedent is itself wanting. For though the case here cited by Coke sounds like an instance in point (as far as it goes), it is not really so. In the case of Humphrey Stafford, it was not a *private* opinion that was asked, but a public one in Court, the prisoner being absent. The occasion was very peculiar. Humphrey Stafford had been formerly attainted by Parliament, but had taken sanctuary at Colchester, where he could not be touched. Afterwards he left that sanctuary to join Lord Lovel's rebellion, and upon its dispersion again took sanctuary at Colnham, a village near Abingdon. Upon this a question arose as to the privileges of this new sanctuary, and whether it was a sufficient protection for traitors; a point of law which the King wished to have settled before he meddled with it. For this purpose,—that is, to decide upon the privileges of the sanctuary,—the Judges were assembled in the Court of Exchequer. But as it was precisely the

same question which, if the prisoner were brought up for judgment, would come before them judicially in the King's Bench,—(for Stafford being already attainted could have no other plea except the privileges of sanctuary),—the Chief Justice saw that a public and formal decision upon it would be equivalent to a prejudication of the case in the absence of the prisoner; and upon that ground prayed to be spared.[1] If this be all therefore, it cannot be inferred from it that he would have objected to give an opinion *privately* to the King beforehand; which for anything that appears he may have actually done, and probably did. And this is the point in question. Suppose however that the case had been really in point: an example worthy of being followed and bringing in a new custom. The question as concerning the constitutional practice in the time of James I., is, *had* it been followed? From the silence of Coke, who was more likely to know than any man, I presume that it had not; and therefore that it was an exception, which if it proves anything with regard to the practice proves that the practice both before and after had been different,—as I have no doubt would abundantly appear if the examinations and consultations preparatory to the more important state trials were searched. Indeed if Coke's own doctrine were admitted—that no man ought to be sent to trial unless it were *certain* that he could not have any defence worth hearing—it would follow that the Judges ought always to have been consulted beforehand, and that no case ought to have been sent for trial which they had not certified to be "good and sufficient in law." To avoid the risk of sending up cases which they would consider bad and insufficient in law was certainly the professed, and I believe the real, object of these consultations in James's time. What could be more natural than that a King anxious to govern by law should consult the Judges of the King's Bench (being the highest authorities) to know what the law was?

How little scruple Coke had at this time to deliver an opinion upon a criminal case which was to come before him judicially (for Owen was to be tried before the King's Bench), we shall now see.

A LETTER TO THE KING OF ACCOUNT OF OWEN'S CAUSE, ETC.[2]

It may please your excellent Majesty,

Myself with the rest of your counsel learned conferred with my Lord Coke and the rest of the Judges of the King's Bench

[1] Luders's Tracts on Various Subjects, etc., vol. i. pp. 147, 164.
[2] 'Gibson Papers,' vol. viii. f. 13. Fair copy.

only, being met at my Lord's chamber, concerning the business of Owen. For although it be true that your Majesty in your letter did mention that the same course might be held in the taking of opinions apart in this, which was prescribed and used in Peacham's cause, yet both my Lords of the Council and we amongst ourselves, holding it in a case so clear not needful, but rather that it would import a diffidence in us, and deprive us of the means to debate it with the Judges (if cause were) more strongly, (which is somewhat), we thought best rather to use this form.

The Judges desired us to leave the examinations and papers with them for some little time to consider (which is a thing they use); but I conceive there will be no manner of question made of it. My Lord Chief Justice, to show forwardness (as I interpret it), shewed us passages of Suarez and others whereby to prove that though your Majesty stood not excommunicate by particular sentence, yet by the general Bulls of *Cœna Domini* and others you were upon the matter excommunicate, and therefore that the treason was as *de præsenti*. But I that foresee that if that course should be held when it cometh to a public day, to disseminate to the vulgar an opinion that your Majesty's case is all one as if you were *de facto* particularly and expressly excommunicate, it would but increase the danger of your person with those that are desperate Papists; and that it is needless; commended my Lord's diligence, but withal put it by; and fell upon the other course (which is the true way), that is, that whosoever shall affirm *in diem* or *sub conditione* that your Majesty may be destroyed, is a traitor *de præsenti*, for that he maketh you but tenant for life at the will of another. And I put the Duke of Buckingham's case who said *that if the King caused him to be arrested of treason he would stab him*, and the case of the impostures Elizabeth Barton, who said that if King Henry the 8th took not his wife again, Catherine dowager, *he should be no longer King*, and the like.

It may be these particulars are not worth the relating. But because I find nothing in the world so important to your service as to have you throughly informed (the ability of your direction considered) it maketh me thus to do; most humbly praying your Majesty to admonish me if I be over troublesome.

For Peacham, the rest of my fellows are ready to make their

report to your Majesty at such time and in such manner as your Majesty shall require it. Myself yesterday took my Lord Coke aside after the rest were gone, and told him all the rest were ready, and I was now to require his Lordship's opinion according to my commission. He said I should have it, and repeated that twice or thrice, as thinking he had gone too far in that kind of negative (to deliver any opinion apart) before; and said he would tell it me within a very short time though he were not that instant ready. I have tossed this business *in omnes partes*, whereof I will give your Majesty knowledge when time serveth. God preserve your Majesty.

Your Majesty's most humble
and devoted subject and servant.

11 Febr. 1614.

A few days after, Coke delivered his opinion on Peacham's case in writing. What the terms were, we do not know. But we know that the conditions under which the opinion was obtained did not interfere with its liberty, for it amounted in effect to a denial of one of Bacon's cardinal positions. To make Peacham's offence treason, it was necessary to hold that one of the means by which "the King's death is compassed or imagined" is the "disabling of his regiment, and making him appear to be incapable or indign to reign." And the opinion which Coke then delivered, as we learn from Bacon himself in another place, "amounted in effect to this—that no words of scandal or defamation, importing that the King was utterly unworthy to govern, were treason, except they disabled his title." With modern ideas, it is not easy to see the value of the distinction; because words only—that is, the mere expression of an opinion—seem to us insufficient in either case to make treason. With the ideas of Bacon's time, it must have been equally difficult, because words tending to excite popular disaffection to the person and government of the King were quite as dangerous to the Crown as words disabling his title. Nevertheless as most of the former treasons had been connected with the claims of some rival and pretender to the Crown, it may be easily supposed that there were few or no cases in the books in which the disabling of the title did not form part of the charge, and was not held to have been proved; and Coke's opinion would stand upon the precedents. However this may be, his answer, whether right or wrong, deprived the Government (in the court of popular opinion) of the support of the King's Bench, and brought on the danger which Bacon apprehended when he said to the King "except

these stay in the ship, ye cannot be safe." To proceed no further with the case under that disadvantage would probably have been his advice, if it had not proceeded so far already. But after the King had pressed it on so eagerly and allowed it to take so much wind (for the general result of all the examinations and consultations was well enough known abroad[1]), it was as dangerous to stop as to go on. To drop the prosecution at this point would certainly have been a great encouragement to the disaffected party, for it would have immediately gone abroad that people might indulge themselves in the *composition* of libels against the State without any risk. What to advise, Bacon (as I gather from the terms of the following letter, in which he forwarded Coke's answer to the King) could not at the moment quite make up his mind.

To the King's most Excellent Majesty.[2]

It may please your excellent Majesty,

I send your Majesty inclosed my lord Cooke's answers. I will not call them rescripts, much less oracles. They are of his own hand, and offered to me as they are in writing, not required by me to have them set down in writing, though I am glad of it for mine own discharge. I thought it my duty, as soon as I received them, instantly to send them to your Majesty; and forbear for the present to speak furder of them. I for my part (though this Muscovia weather be a little too hard for my constitution) was ready to have waited upon your Majesty this day, all respects set aside; but my L. Treasurer, in respect of the season and much other business, was willing to save me.

I will only conclude touching these papers, with a text divided. I cannot say, *Oportet isthæc fieri;* but I may say, *Finis autem nondum.* God preserve your Majesty.

Your Majesty's most humble
and devoted subject and servant,
Fr. Bacon.

I humbly pray your Majesty to keep the papers safe.

14 Feb. 1614.
at 12 of Clock.

[1] "The King since his coming hath had the opinion of the Judges severally in Peacham's case, and it is said that most of them concur to find it treason. Yet the Lord Chief Justice is for the contrary." Chamberlain to Carleton, 20 Feb. 1614.

[2] Balfour MSS.

The decision (whoever was responsible for it) was to go on, the opinion of Coke notwithstanding. On the 24th of February directions were given that Peacham should be sent into Somersetshire for trial[1] at the Western Assizes. But the next day (though "Sir Randall Crew, the King's Sergeant, and Sir Henry Yelverton, Solicitor, were ready to go to horse to have waited on him there"[2]) the order was countermanded. In hope of procuring delay, he had made a new statement, implicating Sir John Sydenham, brother-in-law of his neighbour and patron Mr. Paulet; which was thought to require investigation. Both Sydenham and Paulet were sent for, and the Bishop of Bath and Wells—his own Bishop, and the object of the libel which first brought him under the notice of the High Commission—was appointed to examine him again. "On Sunday," says Chamberlain,—Sunday was the 26th,—"he was at the Court confronted with Sir John Sydenham about certain speeches heretofore passed between them, and Mr. Paulet and some of his men are sent for upon the like occasion. But for ought I learn there is no likelihood of danger, no more than there was towards Sir Maurice Berkeley and a minister or two of that county, that were likewise called in question, and have reasonably acquitted themselves, the matter falling out to be of small moment."[3] Bacon seems to have had no hope of good from this proceeding—believing the new story to be merely a device for delay, which could lead to nothing except the discovery that it was false. Neither does he seem to have had any part in the examination himself, or even to have been present at it; for in reporting to the King the result and the further measures which it had rendered necessary, it will be observed that he speaks only of what he has learned from the Bishop. The principal measure which he considered necessary was another examination, to be taken by himself and his fellows of the learned counsel alone (in which therefore he could have the management of it in his own hands) in order to remove confusions and ambiguities, and clear the indictment of matter depending upon confessions which might be retracted and disavowed as extorted by fear of pain; and with that view to make him believe that the trial was coming on immediately and that it would be his last opportunity of speaking. I do not suppose that since the unsuccessful experiment of the 19th of January, the "manacles" (whatever the nature of that torture may have been) had been either applied or threatened; for we hear nothing of them. But for Bacon's purpose in this examination it is clear that the prisoner must have been relieved from all apprehension of them. What

[1] Gardiner, ii. p. 190.

[2] Chamberlain to Carleton, 2 March, 1614.

[3] Id. ibid.

he said was to be said in such a manner that he could not disavow it in Court, or it would be of no use; and if he could have pleaded fear of torture as his motive in saying it, it would not have been held admissible as evidence.

A Letter to the King from his Attorney concerning Peacham's Case. 28 Feb. 1614.[1]

It may please your excellent Majesty,

I perceive by the Bishop of Bath and Wells, that although it seemeth he hath dealt in an effectual manner with Peacham, yet he prevaileth little hitherto. For he hath gotten of him no new names, neither doth Peacham alter in[2] his tale touching Sir John Sidnam.

Peacham standeth off[3] in two material points *de novo*. The one, he will not yet discover into whose hands he did put his papers touching the consistory villanies. They were not found with the other bundles upon the search; neither did he ever say that he had burned them or defaced them. Therefore it is like they are in some person's hands; and it is like again, that that person that he trusted with those papers, he likewise trusted with these others of the treasons, I mean with the sight of them.

The other, that he taketh time to answer, when he is asked whether he heard not from Mr. Paulet some such words as he saith he heard from Sir John Sydenham, or in some lighter manner.[4]

I hold it fit that myself and my fellows go to the Tower (and so I purpose) to examine him upon these points and some others; at the least, that the world may take notice that the business is followed as heretofore, and that the stay of the trial is upon further discovery, according to that we give out.

I think also it were not amiss to make a false fire, as if all things were ready for his going down to his trial, and that he were upon the very point of being carried down, to see what that will work with him.

Lastly, I do think it most necessary, and a point principally to be regarded, that because we live in an age wherein no coun-

[1] Sir David Dalrymple's 'Memorials and Letters,' p. 29. (D.) Add. MSS. 5503, f. 78 *b*. (A.)

[2] om. D. [3] om. A. [4] So both A. and D.

sel is kept, and that it is true there is some bruit abroad that the Judges of the King's Bench do doubt of the case that it should not be treason; that it be given out constantly, and yet as it were in secret, and so a fame to slide, that the doubt was only upon the publication, in that it was never published. For that (if your Majesty marketh it) taketh away, or at[1] least qualifieth the danger of the example; for that will be no man's case.

This is all I can do to thridd your Majesty's business with a continual and settled care, turning and returning, not with any thing in the world, save only the occasions themselves, and your Majesty's good pleasure.

I had no time to report to your Majesty, at your being here, the business referred, touching Mr. John Murray. I find a shrewd ground of a title against your Majesty and the patentees to these lands, by the coheirs of Thomas Earl of Northumberland. For I see a fair deed, I find a reasonable consideration for the making the said deed, being for the advancement of his daughters (for that all the possessions of the earldom were[2] entailed upon his brother): I find it was made four years before his rebellion; and I see some probable cause why it hath slept so long.

But Mr. Murray's petition speaketh only of the moiety of one of the coheirs, whereunto if your Majesty should give way, you mought be prejudiced in the other moiety. Therefore, if Mr. Murray can get power over[3] the whole, then it may be safe for your Majesty to give way to the trial of the right, when the whole shall be submitted to you.

Mr. Murray is my dear friend; but I must cut[4] even in these things, and so I know he would himself wish no other. God preserve your Majesty.

Your Majesty's most humble
and devoted subject and servant,
FR. BACON.

Febr. the 28th, 1614.

This letter was entrusted to the care of Murray, and enclosed with the note which follows, relating to the subject of the two last paragraphs, which was some petition for a grant of lands. But I know no particulars of it, more than may be gathered from the text.

[1] om. D. [2] *was*: A. [3] *of*: D. [4] om. A.

To my very good friend, Mr. John Murray, of his Majesty's bedchamber—these.[1]

Mr. Murray,

I pray deliver the enclosed to his Majesty; and have care of the letter afterwards. I have written also to his Majesty about your reference, to this purpose; that if you can get power over the whole title, it may be safe for his Majesty to assent that you may try the right upon the deed. This is the furdest I can can go. I ever rest

Your's assured,

Fr. Bacon.

28 Feb. 1614.

Whether Bacon and the learned counsel examined Peacham more than once, or whether the Bishop had not done with him, I cannot say. But there seems to have been a little delay from some cause or other: and his final examination, which is the only other we know of, did not take place till the 10th of March. On that day he was examined at the Tower, in presence of the Lieutenant, by Bacon, Crew, and Yelverton; and, as Bacon seems to have anticipated, disavowed his former stories and told a new one; to what effect we learn from the next letter.

To the King concerning Peacham.[2]

May it please your excellent Majesty,

I send your Majesty inclosed a copy of our last examination of Peacham, taken the 10th of this present; whereby your Majesty may perceive, that this miscreant wretch goeth back from all, and denieth his hand and all. No doubt, being fully of belief that he should go presently down to his trial, he meant now to repeat his part which he purposed to play in the country; which was to deny all. But your Majesty in your wisdom perceiveth, that this denial of his hand, being not possible to be counterfeited, and to be sworn by Adams, and so oft by himself formally confessed and admitted, could not mend his case before any jury in the world; but rather aggravateth it by his notorious impudency and falsehood, and will make him more odious. He never deceived me; for when others had hope of discovery,

[1] Balfour MSS. [2] Gibson Papers, vol. viii. f. 17. Copy.

and thought time well spent that way, I told your Majesty *pereuntibus mille figuræ,* and that he now did but turn himself into divers shapes to save or delay his punishment. And therefore, submitting myself to your Majesty's high wisdom, I think myself bound in conscience to put your Majesty in remembrance, whether Sir John Sidnam shall be detained upon this man's impeaching, in whom there is no truth. Notwithstanding, that furder inquiry be made of this other Peacham, and that information and light be taken from Mr. Poulett and his servants, I hold it (as things are) necessary. God preserve your Majesty.

Your Majesty's most humble
and devoted subject and servant,
FR. BACON.

xii of March 1614.

THE EXAMINATION OF EDMOND PEACHAM, AT THE TOWER, MARCH 10TH, 1614.[1]

Being asked when he was last at London, and where he lodged when he was there? he saith he was last at London after the end of the last parliament; but where lodged he knoweth not.

Being asked with what gentlemen, or others in London, when he was here last, he had conference and speech withal? he saith he had speech only with Sir Maurice Berkeley, and that about the petitions only, which had been before sent up to him by the people of the country, touching the apparitors and the grievances offered the people by the court of the officials.

Being asked, touching one Peacham, of his name, what knowledge he had of him, and whether he was not the person that did put into his mind divers of those traiterous passages which are both in his loose and contexted papers? he saith this Peacham, of his name, was a divine, a scholar, and a traveller; and that he came to him some years past, the certainty of the time he cannot remember, and lay at this examinate's house a quarter of a year, and took so much upon him as he had scarce the command of his own house or study; but that he would be writing, sometimes in the church, sometimes in the steeple, sometimes in this examinate's study; and now saith farther, that those papers,

[1] Sir David Dalrymple's 'Memorials and Letters,' p. 59.

as well loose as contexted, which he had formerly confessed to be of his own hand, might be of the writing of the said Peacham; and saith confidently, that none of them are his own handwriting or inditing; but whatsoever is in his former examinations, as well before his Majesty's learned counsel, as before my Lord of Canterbury, and other the Lords, and others of his Majesty's privy council, was wholly out of fear, and to avoid torture, and not otherwise.

Being required to describe what manner of man the said Peacham that lay at his house was; he saith that he was tall of stature, and can make no other description of him, but saith, as he taketh it, he dwelleth sometimes at Honslow as a minister; for he hath seen his letters of orders and licence under the hand of Mr. D. Chatterton, sometime bishop of Lincoln. He denieth to set his hand to this examination.

Examinat' per FR. BACON, GER. HELWYSSE,
RANULPHE CREWE, H. YELVERTON.

This is the last we hear of the case as far as Bacon was concerned with it. It was now, I imagine, too late to try it at the western assizes during the present circuit. It had to wait for the next. The result we learn from Chamberlain. Writing to Carleton on the 13th of July 1615, he says

"Peacham, the minister, that hath been this twelvemonth in the Tower, is sent down to be tried for treason in Somersetshire before the Lord Chief Baron and Sir Henry Montagu the Recorder. Sir Randal Crew and Sir Harry Yelverton, the King's Sergeant and Solicitor, are sent down to prosecute the trial. If the fellow have the grace to submit himself, I think he shall have no great harm, otherwise he must take his adventure."

And again on the 24th of August,—

"Peacham the minister, after a year's imprisonment in the Tower, was arraigned the 7th of this month at the assizes in Somersetshire, before the Lord Chief Baron and Sir Henry Montagu. Sir Randal Crew and Sir Henry Yelverton were sent down to prosecute the business. Seven knights were taken from the Bench to be of the Jury. He defended himself very simply, but obstinately and doggedly enough; but his offence was so foul and scandalous that he was condemned of High Treason; yet not executed, nor perhaps shall be, if he have the grace to submit himself and show some remorse."

On the 31st of August another attempt was made to obtain from.

him a confession of the truth, at which he seems to have owned himself the author of the writings imputed to him, but denied any intention to publish or preach them. Whether the Government believed this or whether it was merely out of respect for the opinion of the dissentient Judges, the verdict and sentence pronounced against him were thought sufficient for example; and though not pardoned or liberated, he was allowed to live otherwise unmolested till he died about seven months after.[1] It was a case which might have been expected (considering that Coke was understood to be against the prosecution) to excite a good deal of popular sympathy at the time. But I do not find traces of any. Peacham's contemporaries seem to have seen nothing interesting in him. Whatever his deservings may have been, his name owes all its favour with posterity to the discovery, about a hundred years since, of the name of Bacon among eight witnesses to his examination under torture.

[1] "Peacham, the condemned minister, is dead in the jail at Taunton, where they say he left behind him a most wicked and desperate writing, worse than that he was convicted for." Chamberlain to Carleton, 27 March 1616.

CHAPTER V.

A.D. 1615. ÆTAT. 55.

1.

EASTER term began in 1615 on the 26th of April, and Bacon returned from his vacation with a budget of papers for the King on the means of improving his revenue. I have not succeeded in finding any which answer the description, and I am afraid they are altogether lost. If they should ever be recovered they can hardly fail to throw light of the most valuable kind upon his political principles; being a contribution entirely voluntary to the solution of the main political difficulty of his times. As it is, we must content ourselves with the knowledge, derived from the next letter, that this was the subject, or one of the subjects, with which he was busy during the interval of comparative leisure between the law-terms.

The difference of a day between the date at the foot of the letter and the docket on the back (which I noted as remarkable when I made the collation, and therefore I conclude that I was satisfied of the fact at the time, which is long ago) may serve as a reminder that, valuable as exact dates are in all these historical and biographical inquiries, their exactness cannot be depended on always and absolutely. If any question of importance had turned upon the day on which this letter was written, either of the dates in the absence of the other would have seemed conclusive, and yet one must be wrong. If the difference had been the other way, I should have supposed that the date at the end represented the day on which the letter was written and the date on the back the day on which it was sent off. But it is difficult to imagine how it can have been docketed *before* it was finished.

A LETTER TO THE KING, TOUCHING MATTER OF HIS MAJESTY'S REVENUE AND PROFIT. 25 APR. 1615.[1]

It may please your Majesty,

I may remember what Tacitus saith by occasion that Tiberius was often and long absent from Rome. *In urbe, et parva et magna negotia imperatorem simul premunt.* But, saith he, *In recessu, dimissis rebus minoris momenti, summæ rerum magnarum magis agitantur.* This maketh me think it shall be no incivility to trouble your Majesty with business during your abode from London; knowing that your Majesty's meditations are the principal wheel of your estate; and being warranted by a former commandment which I received from you.

I do now only send your Majesty these papers inclosed, because I do greatly desire so far forth to preserve my credit with you, as thus;—that whereas lately (perhaps out of too much desire, which induceth too much belief,) I was bold to say that I thought it as easy for your Majesty to come out of want as to go forth of your gallery; your Majesty would not take me for a dreamer or a projector. I send your Majesty therefore some grounds of my hopes. And for that paper which I have gathered of increasements sperate, I beseech you to give me leave to think that if any of the particulars do fail, it will be rather for want of workmanship in those that shall deal in them than want of materials in the things themselves. The other paper hath many discarding cards, and I send it chiefly that your Majesty may be the less surprised by projectors, who pretend sometimes great discoveries and inventions in things that have been propounded, and perhaps after a better fashion, long since. God Almighty preserve your Majesty.

Your Majesty's most humble
and devoted subject and servant.

26 April, 1615.

2.

Peacham was not the only person whose name owes its lustre in modern times to the accident that when he was prosecuted by the Government Bacon was Attorney General. A gentleman of the

[1] Gibson Papers, vol. viii. f. 18. The heading is the docket, which is in Bacon's hand. The letter is a copy by one of his own men.

name of Oliver St. John has enjoyed during the last thirty years a reputation for patriotic virtue, of which the men of his own time knew or thought so little that they did not care to set any mark upon him by which he could be distinguished from others of the same name; and it is only within the last ten years that the labour of antiquaries has discovered which of the Oliver St. Johns was the true owner of it. Lord Campbell took him for the Oliver St. John who defended Hampden, and became Solicitor General in 1641 and Chief Justice of the Common Pleas in 1648: Mr. Foss, very strangely, for Sir Oliver, who in the course of the very next year succeeded Chichester as Lord Deputy of Ireland, and was afterwards created Viscount Grandison. It was not till November 1859 that Mr. Maclean discovered and announced in 'Notes and Queries' that he was the second son of John St. John of Lydiard Tregoze—a near relation of Lord Grandison; but a very different man.[1]

Except as a proof that the reputation which the name enjoys is a modern growth, his parentage is a question of little importance. How far that reputation is deserved the reader shall judge for himself; for all that we know about the real Oliver St. John who was prosecuted in the Star Chamber for a seditious libel while Bacon was Attorney General, is so little, that I shall be able to exhibit it in these pages at full length. The offence laid to his charge was more serious than Peacham's, though it had not so bad a name or so heavy a penalty; for it aimed at the part in which the Government was weakest, and popular disaffection easiest to rouse and likely to cause most obstruction. And though I have no reason to think that Bacon was the original adviser of the prosecution, I do not doubt that he would have advised it had he been asked, or had it been his business. Indeed he had previously described the case by anticipation, as one which, if it should occur, would be fit for punishment. At the first starting of the project of the voluntary oblation, he had laid it down among the "points to be observed," that "howsoever no manner of compulsory means was to be used, nor no show thereof; yet if any malicious person should deride or scorn or slander the frank disposition of the King's subjects, or purposely dissuade it, or seek to defeat it or divert it, that he should be questioned and severely punished." I do not think he expected the case to arise in the quarter where it did, but otherwise he had forecast its features with great accuracy.

The Benevolence money having come in slowly and scantily in

[1] 'Notes and Queries,' 5 Nov. 1859, p. 386. If it be true, as stated by Birch, that Lord Grandison died in 1630, aged 70, they must have been nearly of the same age.

answer to the first letters from the Council, and the movements of Spinola in Germany (which seemed to threaten the Palatinate) having supplied them with a fresh and popular argument in favour of contribution—for without money how could the Government take such a part in the impending quarrel as became the greatness of England?—a second circular was sent to the Sheriffs towards the end of September, urging greater speed in making the collection and sending in the proceeds. Upon the receipt of these letters, meetings were appointed by the Justices of Peace to be held in the several towns, for the purpose of taking the subject into consideration: and among the rest in Marlborough, a principal town of Wiltshire, which was governed by a Mayor. The Mayor (feeling apparently the want of counsel and assistance), applied to Oliver St. John, as a man of good family and a person of importance in the place. St. John forbore to give any answer in private, but the next day, when the Justices were to meet, sent a letter to the Mayor, with authority to lay it before them if he thought fit. And as this letter, of which a copy was printed in the Cabala, constitutes at once the whole of his offence and the whole of his title to renown, it will be best to give it entire.

"As I think, this kind of Benevolence is against Law, Reason, and Religion.

Against the law. 1. The Law is in the Statute called *Magna Charta* 9 *H.* 3. *cap.* 29. that no free man be any way destroyed, but by the laws of the land.

2. Secondly, besides that the said Statute of *Magna Charta* is by all Princes since established and confirmed, it is in this special case of voluntary or free grants enacted and decreed, 25 *Ed.* 1. *cap.* 5, that none such be drawn into custom, and *cap.* 6, that henceforth be taken no such aids, tasks, free grants, or prizes, but by assent of all the Realm, and for the good of the same. And in *primo* R. 3. *cap.* 2. That the subjects and Commons of this realm from henceforth shall in no wise be charged by any charge or imposition called a Benevolence, or any such like charge, and that such exactions called a Benevolence shall be damned and adnulled for ever.

Against Reason. 1. It is not only without but against Reason that the Commons in their severals and particulars, should be made relievers or suppliers of his Majesty's wants, who neither know his wants, nor the sums that may be raised to supply the same.

2. Secondly, it is against reason that the particular and several Commons distracted, should oppose their judgments and discretion to the judgment and discretion of the wisdom of their land assembled in Parliament, who have there denied any such aid.

Against Religion. It argueth in us want of that love and due respect of our Sovereign Lord and King, which ought to be in every of us towards each other,

which is to stay every one whom we see falling, and reduce the errant. What prosperity can there be expected to befall either our King or Nation, when the King shall, haply of ignorance or (as I hope) out of forgetfulness and unheediness, commit so great a sin against his God as is the violating of his great and solemn oath taken at his Coronation, for the maintaining of the laws, liberties, and customs of this noble realm: and his subjects, some for fear, some in pride, some to please others, shall join hands to forward so unhappy an achievement? Can he any way more highly offend the Divine Majesty whom he then invocated? As also can he give to another Hen. 4 if such an one should rise up (which God forbid) a greater advantage? Let his articles put up against R. 2. be looked on, it will appear that the breach of the laws, infringing the liberties, and failing in this his oath, were the main blemishes wherewith he could distain and spot the honour of that good and gentle Prince, who indeed was rather abused by other than of himself mischievously any way disposed.

Secondly, as very irreligiously and uncharitably we help forward the King's Majesty in that grievous sin of perjury, so into what an hellish danger we plunge ourselves, even so many of us as do contribute, is to be learned out of the several curses and sentences of excommunication given out against all such givers, and namely the two following, viz: the great Curse given out the 51 of H. 3. against all breakers of the liberties and customs of the realm of England with their abettors, counsellors, and executioners, wherein by the sentence of Boniface, Archbishop of Canterbury, and the chief part of all the then Bishops of this land, they are *ipso facto* excommunicated. And that of 25 *Ed. I.* denounced immediately upon the acts made against such Benevolences, or free grants and impositions, had and taken without common assent: which because it is not so long as that former, I will set down as our books deliver the same.

In the name of the Father, the Son, and the Holy Ghost, Amen. Whereas our Sovereign Lord the King, to the honour of God and of holy church, and for the common profit of the realm, hath granted for him and his heirs for ever these articles above written. Robert Archbishop of Canterbury, Primate of all England, admonished all his province once twice and thrice. Because that shortness will not suffer so much delay as to give knowledge to all the people of England of these presents in writing; We therefore enjoin all persons of what estate soever they be, that they and every of them, as much as in them is, shall uphold and maintain these articles granted by our Sovereign Lord the King in all points. And all those that in any point do resist or break, or in any manner hereafter procure, counsel or in any ways assent to resist or break those ordinances, or go about it by word or deed, openly or privily, by any manner of pretence or colour; we the foresaid Archbishop, by authority in this writing expressed, do excommunicate and accurse and from the body of our Lord Jesus Christ and from the company of Heaven, and from all the sacraments of the Holy Church, do sequester and exclude.

Sir, hearing that tomorrow the Justices will be here about this busy

work of Benevolence, wherein you have both sent unto and talked with me, and thinking that it may be you will deliver up the names of the not givers; Forasmuch as I think I shall be scarcely at home to make my further answer, if I should be called for, I pray you both hereby to understand my mind yourself, and if cause so require, to let the Justices perceive as much. So leaving others to their own consciences, whereby in that last dreadful day they shall stand or fall before him who will reward every man according to his deeds, I commend you unto the grace of the Almighty, and rest

Your loving neighbour and friend,
OLIVER ST. JOHN.[1]

Whatever may be thought of the arguments in this letter,—and it seems to me that if good for anything they are good to prove that a Queen's letter in aid of a Church collection is a violation of the coronation oath, and every member of the congregation an accessary who contributes,—it will not be disputed that it more than fulfilled Bacon's description of an offence deserving severe punishment. It was at least a deliberate attempt to "dissuade, defeat and divert" the disposition of the King's subjects to contribute. But it was more than this. In arguing that the proceeding was contrary to *Magna Charta*, the writer might be merely stating his own reason for refusing to give any thing himself. But in declaring in express terms that the King was *ipso facto* guilty of perjury—the highest offence against God; that for such acts Richard II. lost his crown; and that every subject who should lend his help would be accessary to the King's sin and in danger of excommunication, he surely committed what even at this day, in a case between one subject and another involving money, would be called an actionable offence. What it must have seemed in those days to those against whom it was committed, we may best conceive by imagining a like imputation cast upon the House of Commons, and calling to mind the cases of Dr. Cowell and the two Bishops. And certainly if any attempt was to be made for the preservation of reasonable decorum and the common forms of respect in the demeanour of the subject to the sovereign, and if there was any Court in the land legally authorized to take notice of gross breaches of the same, I do not myself see how such a case as this could have been properly passed over. The Star Chamber was such a Court. And about the end of 1614 or beginning of 1615, Oliver St. John was sent for,[2] and order given to bring his case before that tribunal.

[1] S. P. Dom. James I. vol. lxxviii. no. 23.

[2] "There is a gentleman of Wiltshire commonly called the black Oliver St. John, committed for writing a letter to the town of Marlborough (where he was a neighbour), wherein he dissuaded them from giving any benevolence." Chamberlain to Carleton, 5 Jan. 1614–5.

The cause, which had been appointed for the 10th of February, was put off (as we have seen) in consequence of the illness of the Lord Chancellor, till the beginning of the next term, in which Friday the 28th of April was the first Star Chamber day. On the 29th, Bacon reported the result to the King in the following letter, the original of which may now be seen in the British Museum, set out for inspection among the autographs of distinguished persons. The heading which I have inserted is taken from the docket of the copy preserved at Lambeth,[1] which is in Bacon's own hand.

A LETTER TO THE KING REPORTING THE DAY OF HEARING OF ST. JOHN'S CAUSE IN THE STAR CHAMBER. 29 APR. 1615.

It may please your excellent Majesty,

St. John's day is past and well past; I hold it to be *Janus bifrons;* It hath a good aspect to that which is past, and to the future; and doth both satisfy and prepare. All did well; my Lord Chief Justice delivered the law for the benevolence strongly; I would he had done it timely. Mr. Chancellor of the Exchequer spake finely, somewhat after the manner of my late Lord Privy Seal; not all out so sharply, but as elegantly. Sir Thomas Lake (who is also new in that Court) did very well, familiarly and counsellor-like. My Lord of Pembroke (who is likewise a stranger there) did extraordinary well, and became himself well, and had an evident applause.

I meant well also; and because my information was the ground, having spoken out of a few heads which I had gathered (for I seldom do more), I set down as soon as I came home cursorily a frame of that I said; though I persuade myself I spake it with more life. I have sent it to Mr. Murray sealed; if your Majesty have so much idle time as to look upon it, it may give some light of the day's work: but I most humbly pray your Majesty to pardon the errors. God preserve you ever. I rest

Your Majesty's most humble subject
and devoted servant,
FR. BACON.

The sentence was perpetual imprisonment, £5000 fine, and recognition of his offence in all the Courts at Westminster.

[1] Gibson Papers, vol. viii. f. 19.

Of the report of Bacon's speech which accompanied this letter, I have not succeeded in finding either the original or any contemporary copy. It was printed by Rawley in the Resuscitatio, but with the names and localities disguised. For the name St. John, "I. S." is substituted: for Marlborough, "the town of A.": for Wiltshire, "D—shire"; the object, I suppose, being to spare the feelings of the family, and not bring their name upon the stage in connexion with a transaction which was not then considered creditable. The disappearance of the manuscript may perhaps be accounted for in the same way. If it came into the hands of any of the St. John race, they would naturally wish to keep it out of sight. Since Rawley had a copy, it is probable that Bacon meant it to be included in the collection of his speeches, as being part of the history of the time, and a real vindication of the Government in a proceeding unjustly traduced. But as the value of it did not depend in any degree upon the *name* of the person by whom the offence had been committed, he might naturally—out of consideration for black Oliver's relatives, who continued to flourish in honour and loyalty, or even for black Oliver himself, as one who had repaired his fault as far as it could be repaired by public recantation and submission, and had also obtained leave upon earnest and formal petition to have the record of his punishment cancelled,—consent to remove from it whatever tended to identify the man or point attention to him. In another case, which occurred not long after, the same precaution has been taken, no doubt for a similar reason. A charge in the Star Chamber against Mr. Lumsden, Sir John Wentworth, and Sir John Hollis, appears in the Resuscitatio as against M. L. S. W. and H. I. The individual offenders had undergone their censure and received their pardon; nothing of interest to history turned upon their names; the offence was the same whether committed by A., B., C., or D., and the speech was against the offence.

THE CHARGE GIVEN BY SIR FRANCIS BACON, HIS MAJESTY'S ATTORNEY GENERAL, AGAINST MR. I. S., FOR SCANDALIZING AND TRADUCING IN THE PUBLIC SESSIONS LETTERS SENT FROM THE LORDS OF THE COUNCIL TOUCHING THE BENEVOLENCE.[1]

My Lords,

I shall inform you, *ore tenus*, against this gentleman Mr. I. S. A gentleman (as it seems) of an ancient house and name; but

[1] Rawley's Resuscitatio, p. 60.

for the present I can think of him by no other name than the name of a great offender. The nature and quality of his offence, in sum, is this. This gentleman hath, upon advice, not suddenly; by his pen, not by the slip of his tongue;[1] not privately, or in a corner, but publicly, as it were, to the face of the King's ministers and justices; slandered and traduced the King our Sovereign; the Law of the land; the Parliament; and infinite particulars of his Majesty's worthy and loving subjects. Nay the slander is of that nature, that it may seem to interest the people in grief and discontent against the State; whence mought have ensued matter of murmur and sedition. So that it is not a simple slander, but a seditious slander; like to that the poet speaketh of—*Calamosque armare veneno.* A venomous dart that hath both iron and poison.

To open to your Lordships the true state of this offence, I will set before you, first the occasion whereupon Mr. I. S. wrought: then the offence itself in his own words: and lastly, the points of his charge.

My Lords, you may remember that there was the last parliament an expectation to have had the King supplied with treasure, although the event failed. Herein it is not fit for me to give opinion of an house of parliament, but I will give testimony of truth in all places. I served in the Lower House, and I observed somewhat. This I do affirm, that I never could perceive but that there was in that House a general disposition to give, and to give largely. The clocks in the House perchance might differ; some went too fast, some went too slow; but the disposition to give was general: so that I think I may truly say, *solo tempore lapsus amor.*

This accident happening thus besides expectation, it stirred up and awaked in divers of his Majesty's worthy servants and subjects of the Clergy, the Nobility, the Court, and others here near at hand, an affection loving and chearful, to present the King some with plate, some with money, as a free-will offering, (a thing that God Almighty loves, a chearful giver: what an evil eye doth I know not). And, (my Lords,) let me speak it plainly unto you: God forbid any body should be so wretched as to think that the obligation of love and duty from the subject to

[1] The printed copy has "not suddenly, by his Pen; nor by the slip of his Tongue."

the King, should be joint and not several. No, my Lords, it is both. The subject petitioneth to the King in parliament. He petitioneth likewise out of parliament. The King on the other side gives graces to the subjects in Parliament: he gives them likewise, and poureth them upon his people out of parliament; and so no doubt the subject may give to the King in parliament, and out of parliament. It is true the parliament is *intercursus magnus*, the great intercourse and main current of graces and donatives from the King to the people, from the people to the King: but parliaments are held but at certain times; whereas the passages are always open for particulars; even as you see great rivers have their tides, but particular springs and fountains run continually.

To proceed therefore: As the occasion (which was the failing of supply by parliament) did awake the love and benevolence of those that were at hand to give; so it was apprehended and thought fit by my Lords of the Council to make a proof whether the occasion and example both, would not awake those in the country of the better sort to follow. Whereupon their Lordships devised and directed letters unto the sheriffs and justices, which declared what was done here above, and wished that the country might be moved, especially men of value.

Now, my Lords, I beseech you give me favour and attention to set forth and observe unto you five points (I will number them, because other men may note them; and I will but touch them, because they shall not be drowned or lost in discourse) which I hold worthy the observation, for the honour of the state and confusion of slanders; whereby it will appear most evidently what care was taken, that that which was then done might not have the effect, no nor the shew, no nor so much as the shadow of a tax; and that it was so far from breeding or bringing in any ill precedent or example, as contrariwise it is a corrective that doth correct and allay the harshness and danger of former examples.

The first is, that what was done was done immediately after such a parliament as made general profession to give, and was interrupted by accident: so as you may truly and justly esteem it, *tanquam posthuma proles parliamenti*, as an after-child of the parliament, and in pursuit (in some small measure) of the firm intent of a parliament past. You may take it also, if you will,

as an advance or provisional help until a future parliament; or as a gratification simply, without any relation to a parliament; you can no ways take it amiss.

The second is, that it wrought upon example, as a thing not devised, or projected, or required, no nor so much as recommended, until many that were never moved nor dealt with, *ex mero motu*, had freely and frankly sent in their presents. So that the letters were rather like letters of news, what was done at London, than otherwise: and we know *exempla ducunt, non trahunt:* examples, they do but lead, they do not draw nor drive.

The third is, that it was not done by commission under the great seal; a thing warranted by a multitude of precedents, both ancient, and of late time, as you shall hear anon, and no doubt warranted by law, so that the commissions be of that stile and tenour, as that they be to move and not to levy: but this was done by letters of the Council, and no higher hand or form.

The fourth is, that these letters had no manner of shew of any binding act of state: for they contain not any special frame of direction how the business should be managed; but were written as upon trust, leaving the matter wholly to the industry and confidence of those in the country; so that it was an *absque compoto;* such a form of letter as no man could fitly be called to account upon.

The fifth and last point is, that the whole carriage of the business had no circumstance compulsory. There was no proportion or rate set down, not so much as by way of a wish; there was no menace of any that should deny; no reproof of any that did deny; no certifying of the names of any that had denied. Indeed, if men could not content themselves to deny, but that they must censure and inveigh, nor to excuse themselves, but they must accuse the state, that is another case. But I say, for denying no man was apprehended, no nor noted. So that I verily think, that there is none so subtle a disputer in the controversy of *liberum arbitrium*, that can with all his distinctions fasten or carp upon the act, but that there was free-will in it.

I conclude therefore (my Lords) that this was a true and pure Benevolence; not an imposition called a benevolence, which the statute speaks of; as you shall hear by one of my fellows. There is a great difference, I tell you, (though Pilate would not

see it) between *Rex Judæorum* and *se dicens Regem Judæorum.* And there is a great difference between a benevolence and an exaction called a benevolence; which the duke of Buckingham speaks of in his oration to the city; and defineth it to be not what the subject of his good-will would give, but what the King of his good-will would take. But this, I say, was a benevolence wherein every man had a prince's prerogative, a negative voice; and this word, *excuse moy*, was a plea peremptory. And therefore I do wonder how Mr. I. S. could foul or trouble so clear a fountain; certainly it was but his own bitterness and unsound humours.

Now to the particular charge. Amongst other countries, these letters of the Lords came to the justices of D—shire, who signified the contents thereof, and gave directions and appointments for meetings concerning the business to several towns and places within that county: and amongst the rest, notice was given unto the town of A. The mayor of A conceiving that this Mr. I. S. (being a principal person, and a dweller in that town) was a man likely to give both money and good example, dealt with him to know his mind. He, intending (as it seems) to play prizes, would give no answer to the mayor in private, but would take time. The next day then being an appointment of the justices to meet, he takes occasion or pretends occasion to be absent, because he would bring his papers upon the stage: and thereupon takes pen in hand, and instead of excusing himself, sets down and contriveth a seditious and libellous accusation against the King and State, which your Lordships shall now hear, and sends it to the mayor: and withal, because the feather of his quill might fly abroad, he gives authority to the mayor to impart it to the justices, if he so thought good. And now, my Lords, because I will not mistake or mis-repeat, you shall hear the seditious libel in the proper terms and words thereof.

[*Here the papers were read.*]

My Lords, I know this paper offends your ears much, and the ears of any good subject; and sorry I am that the times should produce offences of this nature: but since they do, I would be more sorry they should be passed without severe punishment: *Non tradite factum* (as the verse says, altered a little,) *aut si tradatis facti quoque tradite pœnam.* If any man have a

mind to discourse of the fact, let him likewise discourse of the punishment of the fact.

In this writing (my Lords) there appears a monster with four heads, of the progeny of him that is the father of lyes, and takes his name from slander.

The first is a wicked and seditious slander, or (if I shall use the Scripture phrase) a blaspheming, of the King himself; setting him forth for a Prince perjured in the great and solemn oath of his coronation, which is as it were the knot of the diadem; a Prince that should be a violator and infringer of the liberties, laws, and customs of the kingdom; a mark for an Henry the Fourth; a match for a Richard the Second.

The second is a slander and falsification and wresting of the law of the land, gross and palpable: it is truly said by a civilian, *Tortura legum pessima,* the torture of laws is worse than the torture of men.

The third is a slander and false charge of the parliament, that they had denied to give to the King; a point of notorious untruth.

And the last is a slander and taunting of an infinite number of the King's loving subjects, that have given towards this benevolence and free contribution; charging them as accessary and co-adjutors to the King's perjury. Nay, you leave us not there, but you take upon you a pontifical habit, and couple your slander with a curse; but thanks be to God, we have learned sufficiently out of the Scripture, that *as the bird flies away, so the causeless curse shall not come.*

For the first of these, which concerns the King, I have taken to myself the opening and aggravation thereof; the other three I have distributed to my fellows.

My Lords, I cannot but enter into this part with some wonder and astonishment, how it should come into the heart of a subject of England to vapour forth such a wicked and venomous slander against the King, whose goodness and grace is comparable (if not incomparable) unto any of the Kings his progenitors. This therefore gives me a just and necessary occasion to do two things. The one, to make some representation of his Majesty, such as truly he is found to be in his government, which Mr. I. S. chargeth with violation of laws and liberties: The other, to search and open the depth of Mr. I. S. his offence. Both which

I will do briefly; because the one I cannot express sufficiently, and the other I will not press too far.

My Lords, I mean to make no panegyric or laudative; the King delights not in it, neither am I fit for it: but if it were but a councillor or nobleman, whose name had suffered, and were to receive some kind of reparation in this High Court, I would do him that duty as not to pass his merits and just attributes (especially such as are limited with the present case) in silence: for it is fit to burn incense where evil odours have been cast and raised. Is it so that King James shall be said to be a violator of the liberties, laws, and customs of his kingdoms? Or is he not rather a noble and constant protector and conservator of them all? I conceive this consisteth in maintaining Religion and the true Church: in maintaining the Laws of the kingdom, which is the subject's birth-right; in temperate use of the Prerogative; in due and free administration of Justice; and conservation of the peace of the land.

For Religion, we must ever acknowledge in the first place, that we have a King that is the principal conservator of true religion through the Christian world. He hath maintained it not only with sceptre and sword, but likewise by his pen, wherein also he is potent.

He hath awaked and re-authorized the whole party of the reformed religion throughout Europe; which through the insolency and divers artifices and inchantments of the adverse part, was grown a little dull and dejected. He hath summoned the fraternity of Kings to enfranchise themselves from the usurpation of the See of Rome. He hath made himself a mark of contradiction for it.

Neither can I omit, when I speak of Religion, to remember that excellent act of his Majesty, which though it were done in a foreign country, yet the Church of God is one, and the contagion of these things will soon pass seas and lands: I mean, in his constant and holy proceeding against the heretic Vorstius, whom (being ready to enter into the chair, and there to have authorized one of the most pestilent and heathenish heresies that ever was begun) his Majesty by his constant opposition dismounted and pulled down. And I am persuaded there sits in this court one whom God doth the rather bless for being his Majesty's instrument in that service.

I cannot remember Religion and the Church, but I must think of the seed-plots of the same, which are the Universities. His Majesty, as for learning amongst Kings he is incomparable in his person; so likewise hath he been in his government a benign or benevolent planet towards learning: by whose influence those nurseries and gardens of learning (the Universities) were never more in flower nor fruit.

For the maintaining of the Laws, which is the hedge and fence about the liberty of the subject, I may truly affirm it was never in better repair. He doth concur with the votes of the nobles; *Nolumus leges Angliæ mutare.* He is an enemy of innovation. Neither doth the universality of his own knowledge carry him to neglect or pass over the very forms of the laws of the land. Neither was there ever King (I am persuaded) that did consult so oft with his Judges, as my Lords that sit here know well. The Judges are a kind of council of the King's by oath and ancient institution; but he useth them so indeed. He confers regularly with them upon their returns from their visitations and circuits. He gives them liberty, both to inform him, and to debate matters with him; and in the fall and conclusion commonly relieth on their opinions.

As for the use of the Prerogative, it runs within the ancient channels and banks: some things that were conceived to be in some proclamations, commissions, and patents, as overflows, have been by his wisdom and care reduced; whereby, no doubt, the main channel of his prerogative is so much the stronger. For evermore overflows do hurt the channel.

As for administration of Justice between party and party, I pray observe these points. There is no news of great seal or signet that flies abroad for countenance or delay of causes. Protections rarely granted, and only upon great ground, or by consent. My Lords here of the Council and the King himself meddle not (as hath been used in former times) with matters of *meum* and *tuum*, except they have apparent mixture with matters of estate, but leave them to the King's Courts of Law or Equity. And for mercy and grace (without which there is no standing before justice) we see the King now hath reigned twelve years in his white robe, without almost any aspersion of the crimson dye of blood. There sits my lord Hobart, that served Attorney seven years. I served with him. We were so happy, as there

passed not through our hands any one arraignment for treason; and but one for any capital offence; which was that of the Lord Sanquhar; the noblest piece of justice (one of them) that ever came forth in any King's times.

As for the Penal Laws, which lie as snares upon the subjects, and which were as a *nemo scit* to King Henry VII; it yields a revenue that will scarce pay for the parchment of the King's records at Westminster.

And lastly for Peace, we see manifestly his Majesty bears some resemblance of that great name, *a Prince of peace*; he hath preserved his subjects during his reign in peace, both within and without. For the peace with states abroad, we have it *usque ad satietatem*: and for peace in the lawyers' phrase, which count trespasses, and forces, and riots, to be *contra pacem*, let me give your Lordships this token or taste, that this Court, where they should appear, had never less to do. And certainly there is no better sign of *omnia bene*, than when this Court is in a still.

But (my Lords) this is a sea of matter: and therefore I must give it over, and conclude, that there was never King reigned in this nation that did better keep covenant in preserving the liberties and procuring the good of his people: so that I must needs say for the subjects of England,

O fortunatos nimium sua si bona nôrint;

as no doubt they do both know and acknowledge it; whatsoever a few turbulent discoursers may, through the lenity of the time, take boldness to speak.

And as for this particular touching the Benevolence, wherein Mr. I. S. doth assign this breach of covenant, I leave it to others to tell you what the King may do, or what other Kings have done; but I have told you what our King and my Lords have done: which, I say and say again, is so far from introducing a new precedent, as it doth rather correct, and mollify, and qualify former precedents.

Now (Mr. I. S.) let me tell you your fault in few words: for that I am persuaded you see it already, though I woo no man's repentance; but I shall, as much as in me is, cherish it where I find it. Your offence hath three parts knit together:

Your slander,
Your menace, and
Your comparison.

For your slander, it is no less than that the King is perjured in his coronation oath. No greater offence than perjury; no greater oath than that of a coronation. I leave it; it is too great to aggravate.

Your menace, that if there were a Bullingbroke, or I cannot tell what, there were matter for him, is a very seditious passage. You know well, that howsoever Henry the Fourth's act by a secret providence of God prevailed, yet it was but an usurpation; and if it were possible for such a one to be this day (wherewith it seems your dreams are troubled) I do not doubt his end would be upon the block; and that he would sooner have the ravens sit upon his head at London bridge, than the crown at Westminster. And it is not your interlacing of your "God forbid," that will salve these seditious speeches: neither could it be a forewarning, because the matter was past and not revocable; but a very stirring up and incensing of the people. If I should say to you (for example) "If these times were like some former times, of King Henry VIII. or some other times, which God forbid, Mr. I. S. it would cost you your life;" I am sure you would not think this to be a gentle warning, but rather that I incensed the court against you.

And for your comparison with Richard II. I see you follow the example of them that brought him upon the stage and into print in Queen Elizabeth's time; a most prudent and admirable Queen. But let me intreat you, that when you will speak of Queen Elizabeth or King James, you would compare them to King Henry VII. or King Edward I. or some other parallels to which they are like. And this I would wish both you and all to take heed of, how you speak seditious matter in parables, or by tropes or examples. There is a thing in an indictment called an inuendo; you must beware how you beckon or make signs upon the King in a dangerous sense. But I will contain myself and press this no further: I may hold you for turbulent or presumptuous; but I hope you are not disloyal: you are graciously and mercifully dealt with. And therefore having now opened to my Lords, and (as I think) to your own heart and conscience, the

principal part of your offence, which concerns the King, I leave the rest, which concerns the law, parliament, and the subjects that have given, to Mr. Serjeants and Mr. Solicitor.

The other speeches are not preserved. But with regard to Coke's we shall meet further on with a piece of additional information, which is important; both as explaining Bacon's wish that he had delivered the law for the Benevolence *timely* as well as strongly, and also as settling the question of law as it was then understood. From a list of "innovations" which Coke was charged not long after with introducing into the laws and government, it appears that when the question of the Benevolence was first stirred he had maintained "that it was not lawful either to levy it or to move for it:" and "in this" (Bacon adds) "he prevailed, and gave opinion that the King by his great seal could not so much as move any his subjects for benevolence. *But this he retracted after in the Star Chamber;* but it marred the Benevolence in the mean time." If Coke retracted in the Star Chamber an opinion to which he had committed himself at the Council table, we may be sure that it had been a hasty one, which he could not defend. Yet it is easy to believe that the rumour of it had in the meantime encouraged opposition and obstruction; and it was the more important that it should be contradicted publicly and on a conspicuous occasion. It seems that he had taken an opportunity some months before to disown the opinion that the proceedings of the Council were unlawful; for shortly after St. John had delivered himself of this protest, when some of the counties to which the first letters had been sent replied (in the same sense though in a less offensive manner) by appeals to the act of Richard III. against Benevolences and fears that they would be establishing a dangerous precedent, some of the Justices from those counties were summoned before the Council to hear the law expounded; and Coke himself explained to them (November 1614) that the statute of Richard III. did not apply, and that the Council "had done nothing contrary to the laws of the realm."[1] But this was in private audience; and though the corrected Justices would no doubt spread the news abroad in their several neighbourhoods, the delivery of the same opinion publicly in the Star Chamber (then a tribunal much respected) would have a wider effect and make a deeper impression. That the object of the proceeding in this as in the case of William Talbot was not to punish the man but to make an impression upon opinion by a judicial sentence accompanied with authoritative declaration, may be gathered from the conclusion of Bacon's speech;

[1] Gardiner, ii. p. 174; Lansd. MSS. 160, f. 118.

which is evidently intended to prepare for the submission which followed. A fine of £5000 with imprisonment during the King's pleasure would have been a heavy punishment if it had been exacted to the uttermost; but the penalties of the Star Chamber in James's time were seldom enforced against delinquents who acknowledged their fault. St. John made a full acknowledgment in the Star Chamber on the 14th of June,[1] and was probably released from prison at that time or soon after. His submission (which is more, I think, than the formal submission commonly exacted, or supposed to be exacted, as a condition of the remission of punishment, and which is evidently his own composition) has been by somebody's care preserved; and as I promised to lay before the reader *all* that is known about the man,—and whatever be the value of it otherwise it is an important fact in his life,—here it is.

Right Honorable Lords, most grave Judges, worthy Gentlemen and dear Countrymen all; I am hither come by sentence and decree of this high and honourable Court, to make public confession of that wicked and wretched offence in the same most honourable Court the first sitting day of the last term heard, and by a bench of my honourable Judges censured and condemned, for reproachful and blasphemous against the majesty of our most gracious King, injurious and slanderous against the lower House of Parliament, seditious and slanderous against the common peace of this noble and blessed nation. So it is a threefold sin, a sin wounding those three things, which of all others ought not to be touched (next under the majesty of the Almighty God) but by all means to be reverenced. Yea the prophet David is bold[2] to say Psal. 89 : 51 : *That he that blasphemeth the King blasphemeth also* (therein) *even the God of Heaven himself.* His words are *Thine enemies have reproached thee O Lord, because they have reproached the footsteps of thine anointed.* Now it is not unknown to you all (I am sure) how heavy punishments Almighty God in his most holy laws hath inflicted upon that foul and audacious sin : Levitt : 24 : *even death itself.* As therefore I should show my heart more hard than flint if I should not willingly earnestly and religiously both acknowledge and repent so great an iniquity, so should I show myself too shamefully ingrateful if I should not in all thankfulness here take up occasion to remember both the singular wisdom and holy discretion of those my most honourable Judges and censurers in this sanative part of their sentence, providing as well for the recovery of me the miserable delinquent as the preservation of such amongst yourselves and others, as might otherways have fallen, or at least dangerously stumbled, at that my scandal and block of offence; as also their great clemency and mercy in the other part vindicative, rendering (as justice and policy requireth) unto the transgressor the recompense of his transgression; yet with lenity (I must needs confess) more[3] than myself (after the sight of my fault) did expect. For no sooner did I

[1] Camden. [2] *loud :* MS. [3] *my :* MS.

hear laid[1] open by those very learned and worthy gentlemen his Majesty's Counsel learned in the laws, the dangers and mischiefs which might have ensued upon my rash and unadvised writing, and saw the Lords' apprehension thereof, but I had some beginning and feeling of remorse of my great offence, and now upon a more serious consideration of the same, I do in all humility prostrate myself (as duty bindeth) first at the feet of his most excellent Majesty, and secondly before these right honourable Lords and most grave sages, with all humble thankfulness and due acknowledgment of their great clemency towards me.

And I do now for further declaration of my penitency and sorrowful heart address myself unto my brethren and countrymen in general; for whose sakes I suppose this my public confession and acknowledgment was by their Lordships' wisdoms ordained as a preservative or antidote, against the poisonful humour and perilous contagion wherewith over many of us (the more is the pity) are infected and sorely corrupted, over busily prying into and enquiring after the doings of the higher powers; yea so far as that we leave not their thoughts and purposes many times unsifted and examined, forgetting that we are taught by the Preacher (Eccle: 8. ver. 2, 3, 4) in these words: *I advertise thee to take heed to thy*[2] *mouth of the King and to the word of the oath of God: Hasten not to go forth of his sight, stand not in an evil thing, for he will do whatsoever pleaseth him.*

Where the words of the King is, there is power, and who shall say unto him what doest thou?

And Pro: 25. 3: *That no man can sound the heart of the King.*

Pro. 27. 8: *That a man wandering from his own place is as a bird wandering from her nest.*

And lastly, Pro. 16. 14. and 20. 2: *That the wrath of the King is as messengers of death, and he that provoketh him unto anger sinneth against his own soul.*

Good friends and brethren, had we wit in time of liberty and prosperity to consider these things duly, we should every man lie closer to his own vocation, and not so much busy ourselves as we do with things too high for us.

If ever nation had cause to repose itself and rejoice in their King (my[3] beloved countrymen) we of happy England have cause to clap our hands, to leap, to dance, and to lift up our voices in thanksgiving unto our loving God, who in a season so perilous hath raised up unto us such a David, to feed his people in Jacob and his inheritance in Israel; to feed them in the simplicity of his heart and to guide them by the discretion of his hands, to settle peace within their borders, and to satisfy them with the flower of wheat, and which is above all, to show unto his Jacob (amongst us) the doctrine of his holy word, and his statutes and judgments to his people Israel. He hath not dealt so with every nation; no not near us; though (blessed be our God therefore) it is verily to be thought that most people christened receive warmth from his Majesty's fire, and vigour from his virtue.

[1] *here lay*: MS. [2] *thie*: MS. [3] *wee*: MS.

Blessed art thou O land (saith the preacher) 10 ver. 17. when thy King is the son of nobles, and thy Princes eat in time for strength and not for drunkenness. Had ever nation a King more nobly descended? We all know him (God be thanked) not for the son of nobles, but even for the top and crown seed of all the royal kings of this flourishing realm, since the glorious conquest thereof. Neither then was that most famous conqueror a stranger from the blood of the former Kings, but so near unto Edward the Confessor, that among other it was no[1] reason of his part or promise of the Kingdom after his decease whereupon the Royal Conqueror took the occasion of his invasion and happy conquest.

And for the other point or note of Blessedness (his diet) whereto if you will add also his apparel and whatsoever other outward gloriation or bodily ostentation that most mastereth and overswayeth the might of the earth, all men see it to be of that moderation and seemly mean, free from all excess, as not only ought to stir up the whole land to an answerable imitation thereof, but doth also as it were in plain English terms (if we had wit and grace to understand the same) deliver unto you this worthy doctrine, that it is a shame for a wise man having a soul to seek praise and glory from the body. But his excellencies and graces I may not take upon me to recount. I know my tongue cannot speak them, my pen cannot set them down. Besides it is not the work I am appointed unto. Yet having so highly offended the Majesty of my so gracious a King in laying before you occasion of withdrawing your dutiful affections and affectionate obedience, my soul longeth somewhat to do or say, whereby (at least) I may do my poor endeavour to right so odious a wrong. And I hope this honourable Court will tolerate the same and your selves not unwillingly give ear thereunto.

If it were not for these causes I would unto some of you open, unto others call to your minds, an argument of such true and natural love in his most excellent Majesty to this our realm, long ere he wore the diadem thereof, as would make you all to say he were a beast and no Englishman, that, knowing it, would ever be backward in remunerating so great a love with all reciprocal affection and respect. It is the action of 1588 wherein most of you know, the rest have heard, how mischievous the Pope and Spaniard were bent to our destruction, what preparations to slay, what whips and instruments to torment the unslain, what strength by home Papists they were sure of, how able to draw into their association other forces in abundance, how fit the neighbourhood of our own King was then to have made the enterprise unresistable, and then judge with yourselves if ever there were shewed a more sure testimony of true natural and fatherly love upon the earth. I may not dilate upon the forcible circumstances belonging; yet are they worthy your further enquiry after them, only I will show unto you that he not only refused to join with them, but (denying them all aid) would not so much as permit them succour upon his coasts. And not that alone, but he presently put forth such a divine and holy exposition upon part of the 12th of Revelations in support and

[1] *noe*: MS.

honour of our then Queen and the Gospel of Truth, which she maintained, and for defacing the enemies thereof, as required not only great learning and familiarity in the holy Scripture generally, but even much study and frequent meditation in that particular subject. Salomon would say, *Surely this is the natural father.*

Now to the second part of my offence (as I understood that the division): it is the slandering of the lower house of Parliament, a detestable sin, will you say, being one of the three estates of this noble land. Beloved I must needs say, and yet cannot deny, but the plain grammatical construction of mine own words will directly convince me thereof; and myself cannot but think the excuses wherewith I may comfort myself in my own conceipt altogether frivolous and idle, here to be spoke of. Therefore my very heart (dear brethren) groaneth, and my bowels yearn within me, to think that I should by either tongue or pen affirm so great an untruth against so high and honourable a Court, one of the three estates of this realm, of that antiquity authority and necessity as (convinced by the truth) I do acknowledge it to be true. Beloved brethren, the apostle James biddeth that we should acknowledge our faults one to another; and why? that we may be healed. The apostle John sayeth *If we acknowledge our sins God is faithful and just to forgive us our sins.* And Salomon, Pro: 28, telleth us that *he that hideth his sins shall not prosper: But he that confesseth and forsaketh them shall have mercy.* According to all which holy David after his adultery and murder (reproved by the prophet Nathan) confesseth *I have sinned:* and the prophet straight pronounceth *the Lord also hath put away thy sin.*

That therefore my confession may be more plain, and the very particular thereof the better known unto every man, This it is, dear countrymen. I do in that my writing, here censured as above said, affirm that the Parliament (meaning the last assembled) did deny to give subsidy to aid the King; which (as Mr. Attorney and others of the learned Counsel made very clear, yea and the Lords with all the rest of the Judges constantly maintained) was most false and untrue. Yea I do not only acknowledge the untruth of that my assertion, but further freely and with the more grief I confess that having spoken with many of that house, I never spoke with any of them but he did very earnestly protest that for himself and so many others of them as he knew, they were all minded to have yielded a very large and ample supply, had the session continued. So that you see by my confession, my error was not only the affirming an untruth barely, but (which increaseth the transgression) even a known untruth: the Lord shew mercy to mine infirmity, and hold from me the rod belonging to the back of such a fool.

The third part of my offence (good countrymen and friends) is sedition and disturbance of the common peace, which my rash and wretched writing might have wrought, by alienating the hearts of the King's subjects from their due allegiance and dutiful obedience, to the King our liege Lord and sovereign, next under God, to be loved, feared, honoured and obeyed, and that not for fear only but for very conscience sake.

True it is, brethren, this must have been through your great default also in taking, as well as mine in giving, the scandal and cause of offence. But alas your condemnation is no discharge to me: my sin had still lien at my own door. David called the water which his men fetched with peril of their lives the blood of their lives, though not one drop of blood was shed in that enterprise. So irksome was it to him to think that through his words any man might have been hazarded. By God's law not only he that threw down another or caused his fall was guilty of blood, but he that prevented not (what in him was) the danger which otherways might have befallen, as the house not made with battlements was guilty of blood if any man happened to fall thence. Alas good brethren, if in this my indiscreet building and work I had not let fall these forenamed[1] stumbling-blocks, yet see my rashness and forgetfulness to provide for the safety and preservation of such my brethren as are weak and apt to stumble, were cause enough to reprehend me of sin against you, if any such weak be amongst you. And alas, alas, what steadfastness is there in any man? Therefore leaving to show further my sin against you, in the scandals and offences cast by me in the quiet and dutiful ways of your obedience, and holding myself more indebted unto you even in this sin of improvision and negligence than that my very life may well recompence, I beseech you all to pardon, and of your prayers also, for saith St. James *The prayer of the righteous availeth much, if it be fervent.*

God save the King.[2]

It was upon this submission, I presume, that St. John was set at liberty without being called upon to pay the fine. The date of his release is uncertain, except that it was while Ellesmere was Lord Chancellor, which implies that it was before March, 1616–7. But the sentence remaining on record, he afterwards petitioned the King that he would "further be graciously pleased to show his most admirable goodness and mercy (if it might stand with due order of State policy) in commanding a removal or deleator of the whole record thereof; that so great an ignominy remain not on the name of him who having been now received your Majesty's sworn servant, is still resolved,"[3] etc. And on the 21st of October, 1618, the fine was formally remitted.[4] Large extracts from this petition may be seen in Mr. Dixon's 'Personal History of Lord Bacon.' But as I do not think that those who have read his 'Submission' will obtain any fresh light from it as to the nature of the man, I content myself with the reference. From a comparison of the three—the letter, the submission, and the petition—which form the *opera omnia* of black

[1] *forenaming* in MS.
[2] Harl. MSS. 6854, f. 112. Docketed "Mr. St. John's submission."
[3] Dixon's 'Personal History of Lord Bacon,' p. 189.
[4] Gardiner, ii. p. 177.

Oliver St. John, I should myself infer that he was a well meaning man who had too high an opinion of his literary powers.

3.

How far copies of speeches made in the days when there was no reporting can be trusted as representing what was actually spoken, is a difficult and probably an unanswerable question. In this case we see from Bacon's letter to the King that the report was made by himself from memory, and that it was intended to be as true a report as his memory could supply. We see also by comparing his speeches in the House of Commons, as written out by himself, with the notes in the Journals, that they were the speeches really delivered,—though no doubt revised and corrected; and in some cases perhaps, when he wished to make some further use of them, enlarged. How much liberty he allowed himself in that way, the Journals do not give us the means of judging,—being themselves so fragmentary, that the absence in them of all traces even of the most important and striking passage would not justify us in presuming that it had not been contained in the speech. But I am able to produce one authentic instance of revision and correction by himself of his own report of a speech of his own, which shows how much pains he could sometimes take in that way; though it leaves the question still doubtful whether his object was to make it a truer report of what he did say, or to say it in better fashion.

Of the speech which by right of date comes next—the charge against Owen—there are two manuscript copies at Lambeth, much varying the one from the other. Both are in the handwriting of men commonly employed by Bacon as scribes: both bear marks of correction by himself: both are incomplete. They appear to have been overlooked, or looked at carelessly, by Tenison and Birch; probably because they were presumed to contain only old matter; the Charge having been printed by Rawley in the Resuscitatio. A little examination however would have shown that Rawley's copy had been taken from a different manuscript, representing the less perfect of the two without the latest corrections; and that the other is a fair copy of an enlarged and improved version of it; a version so much fuller and in so many ways altered, that (since the variations could scarcely be represented intelligibly in footnotes, and yet as a piece of literary work are worth studying) I have thought it best to print the whole of both. That both are fragments is easily seen; for the subject being carefully laid out in five parts, only three of them are handled.

How it came to pass that, after so much pains taken to make it so far perfect, it was left unfinished, is a question which cannot be answered with any confidence; though several causes may be imagined. That which seems to me most probable is that immediately after the trial, when Owen had been convicted of High Treason, and it was yet doubtful whether the sentence would be carried into execution, Bacon thought it important to have ready for circulation among the people some exposition of the case by way of justifying the severity: for which purpose a full report of his own speech in court (which had precisely the same object) would serve as well as anything. This may have led him to begin the revision of the rough draft (whether it were a note of what he intended to say or a recollection of what he had said), perhaps with enlargements and improvements. But finding before he had finished it that the King was content with the legal sentence and did not mean to have it carried into effect, he laid it by, as not wanted.

For any modern purpose, the history of it is of little importance. If the improvements and enlargements were not struck forth under the excitement of oral delivery, but introduced afterwards in the leisure of literary composition, they are not the less examples of his taste and art in oratory, and may probably be taken for specimens of his best work in that style; and the argument, whether or not it was delivered in Court with as much advantage in the setting forth, is not less the real argument by which the indictment, the verdict, and the sentence were induced and justified.

The loss of the remainder of the speech leaves us in some doubt as to the nature of the act of which Owen was accused; for though we know the words laid to his charge (and there was no doubt as to the fact), we are not informed of the circumstances in which they were written or spoken; or whether it was with any particular ill intention. In his fourth place, Bacon undertook to prove that his case in this respect was particularly inexcusable; and I suppose he did prove it to the satisfaction of the Judges of the Court of King's Bench. But as the record of the proof is lost, we that sit as Judges in the Court of Posterity are bound to leave the benefit of that doubt to the prisoner.

The speech was spoken on the 17th of May 1615.[1]

[1] Chamberlain to Carleton, 20 May 1615.

THE CHARGE OF OWEN, INDICTED OF HIGH TREASON, IN THE KING'S BENCH, BY SIR FRANCIS BACON, HIS MAJESTY'S ATTORNEY-GENERAL.[1]

The treason wherewith this man stands charged, is for the kind and nature of it ancient, as ancient as there is any law of England, but in the particular late and upstart, and again in the manner and boldness of it new and almost unheard of till this man. Of what mind he is now I know not, but I take him as he was, and as he stands charged. For high treason (I tell you) is not written in ice; that when the body relenteth, the impression goeth away.

In this cause the evidence itself will spend little time: time therefore will be best spent in opening fully the nature of this treason, with the circumstances thereof; because the example is more than the man.

I think good therefore by way of inducement and declaration in this cause to open unto the court, jury, and hearers, five things.

The first is the clemency of the King; because it is news, and a kind of rarity, to have a proceeding in this place upon treason: and perhaps it may be marvelled by some, why after so long an intermission it should light upon this fellow; being a person but contemptible, a kind of venomous fly, and a hang-by of the seminaries.

The second is, the nature of this treason, as concerning the fact; which of all kinds of compassing the King's death, I hold to be the most perilous, and as much differing from other conspiracies, as the lifting up of a thousand hands against the King, like the giant Briareus, differs from lifting up one or a few hands.

The third point that I will speak unto is the doctrine or opinion, which is the ground of this treason; wherein I will not argue or speak like a divine or scholar, (as a scholar I know the disadvantage), but as a man bred in a civil life: and to speak plainly, I hold the opinion to be such that deserveth rather detestation than contestation.

The fourth point is the degree of this man's offence, which is

[1] Gibson Papers, vol. viii. no. 14. Rough draft, written apparently from dictation, largely corrected and interlined in Bacon's own hand.

more presumptuous than I have known any other to have fallen into in this kind, and hath a greater overflow of malice and treason.

And fifthly, I will remove somewhat that may seem to qualify and extenuate this man's offence, in that he hath not affirmed simply that it is lawful to kill the King, but conditionally that if the King be excommunicate, it is lawful to kill him: which maketh little difference either in law or peril.

For the King's clemency, I have said it of late upon a just occasion,[1] and I still speak it with comfort: I have now served his Majesty solicitor and attorney eight years and better; yet this is the first time that ever I gave in evidence against a traitor at this bar or any other. There hath not wanted matter in that party of the subjects whence this kind of offence floweth (I mean the papists) to irritate the King: he hath been irritated by the powder treason, which might have turned judgment into fury. He hath been irritated by wicked and monstrous libels; irritated by a general insolency and presumption in the Papists throughout the land; and yet I see his Majesty keepeth Cæsar's rule: *Nil malo, quam eos esse similes sui, et me mei.* He leaveth them to be like themselves; and he remaineth like himself, and striveth to overcome evil with goodness. A strange thing, bloody opinions, bloody doctrines, bloody examples, and yet the government still unstained with blood.

As for this Owen that is brought in question, though his person be in his condition contemptible; yet we see by miserable examples, that these wretches which are but the scum of the earth, have been able to stir earthquakes by murdering of princes; and if it were in case of contagion, as this is a contagion of the heart and soul, a rascal may bring in a plague into the city as well as a great man: so it is not the person, but the matter that is to be considered.

For the treason itself, which is the second point, my desire is to open it in the depth thereof, if it were possible; but it is bottomless. I said in the beginning, that this treason in the nature of it was old. It is not of the treasons whereof it may be said, from the beginning it was not so. You are indicted, Owen, not upon any statute made against the Pope's supremacy, or other matters that have reference to religion; but merely upon that

[1] In the charge against St. John, p. 143.

law which was born with the kingdom, and was law even in superstitious times when the Pope was received. The compassing and imagining the King's death was treason. The statute of 25 Edw. III. which was but declaratory, begins with this article as the capital of capitals in treason. Of all treasons the conspiracy against the King's person is the most odious and the most perilous: and so the civil law saith, *Conjurationes omnium proditionum odiosissimæ et perniciosissimæ.* Against hostile invasions and the adherence of subjects to enemies, Kings can arm. Rebellions must go over the bodies of many good subjects before they can hurt the King: but conspiracies against the persons of Kings are like thunder-bolts that strike upon the sudden, not to be avoided. *Major metus à singulis,* saith he, *quàm ab universis.* There is no preparation against them: and that preparation which may be of guard or custody, is a perpetual misery. And therefore they that have written of the privileges of ambassadors and of the amplitude of safe-conducts, have ever defined, that if an ambassador or a man that cometh in upon the highest safe-conducts, do practise matter of sedition in a state, yet by the law of nations he ought to be remanded; but if he conspire against the life of a prince by violence or poison, he is to be justiced: *Quia odium est omni privilegio majus.* Nay, even amongst enemies, and in the most deadly wars, yet nevertheless conspiracy and assassinate of princes hath been accounted villainous and execrable.

The manners of conspiring and compassing of the King's death are many: but it is most apparent that amongst all the rest this surmounteth. First, because it is grounded upon a motive of religion; which is a trumpet that inflameth the heart and powers of a man to daring and resolution. Secondly, it is general; for when a particular conspiracy is plotted or attempted against a King by some one or some few conspirators, it meets with a number of impediments. Commonly he that hath the head to devise it, hath not the heart to undertake it: and the person that is used, sometimes faileth in courage; sometimes he faileth in opportunity; sometimes he is touched with remorse. But to publish and maintain that it may be lawful for any man living to attempt the life of a King, this doctrine as a venomous sop, as a legion of malign spirits, or an universal temptation, doth enter at once into the hearts of all that are any ways pre-

pared, or of any predisposition to be traitors; so that whatsoever faileth in any one, is supplied in many. If one man faint, another will dare; if one man hath not the opportunity, another hath; if one man relent, another will be desperate. And thirdly, particular conspiracies have their periods of time, within which if they be not taken, they vanish; but this is endless, and importeth perpetuity of springing conspiracies. And so much concerning the nature of the fact.

For the third point, which is the doctrine, that upon an excommunication of the Pope, with sentence of deposing, a King by any son of Adam may be slaughtered; and that it is justice and no murder; and that their subjects are absolved of their allegiance, and their realms exposed to spoil and prey: I said before, that I would not argue the subtlety of the question: it is rather to be spoken to by way of accusation of the opinion as impious, than by way of dispute as doubtful. Nay, I say, it deserveth rather some holy war or league amongst all Christian princes of either religion for the extirping and rasing of this opinion and the authors thereof from the face of the earth, than the stile of pen or speech. Therefore in this kind I will speak to it a few words, and not otherwise. Nay, I protest, if I were a Papist I should say as much: Nay, I should speak it perhaps with more indignation and feeling. For this horrible opinion is our advantage, and it is their reproach, and will be their ruin.

This monster of opinion is to be accused of three most evident and most miserable effects.

First, Of the slander it bringeth to the Christian faith, which is a plain plantation of irreligion and atheism.

Secondly, The subversion which it introduceth into all policy and government.

Thirdly, The great calamity it bringeth upon the Papists themselves; of which the more moderate sort, as men misled, are to be pitied.

For the first, if a man doth visit the foul and polluted opinions, customs, or practices of heathenism, Mahometanism, and heresy, he shall find they do not attain to this height. Take the examples of the most damnable memory amongst the Heathen. The proscriptions in Rome of Sylla, and afterwards of the Three, what were they? They were but of a finite number of persons, and those not many, that were exposed unto any man's sword.

But what is that to the proscribing of a King, and all that shall take his part? And what was the reward of a soldier that amongst them killed one of the proscribed? A small piece of money. But what is the reward now of one that shall kill a King? The kingdom of heaven. The custom among the Heathen that was most scandalised was, that sometimes the priest sacrificed men; but yet you shall not read of any priesthood that sacrificed Kings.

The Mahometans make it a part of their religion to propagate their sect by the sword; but yet still by honourable wars, never by villanies and secret murders. Nay, I find that the Saracen prince, of whom the name of the assassins is derived, which had divers votaries at commandment, which he sent and employed to the killing of divers princes in the east, by one of whom Amurath the first was slain, and Edward the first of England was wounded, was put down and rooted out by common consent of the Mahometan princes.

The Anabaptist, it is true, cometh nearest. For they profess the pulling down of magistrates: and they can chaunt the psalm, *To bind their Kings in chains, and their nobles in fetters of iron.* This is the glory of the saints, much like the temporal authority that the Pope challengeth over princes. But then this is the difference, that that is a furious and fanatical folly, and this is a sad and solemn mischief: he *imagineth mischief as a law;* a law-like mischief.

As for the defence which they do make, it doth aggravate the sin, and turneth it from a cruelty towards man to a blasphemy towards God. For to say that all this is *in ordine ad spirituale,* and to a good end, and for the salvation of souls, it is directly to make God author of evil, and to draw him into the likeness of the prince of darkness; and to say with those that Saint Paul speaketh of, *Let us do evil that good may come thereof;* of whom the apostle saith excellently, *that their damnation is just.*

For the destroying of government universally, it is most evident that it is not the case of protestant princes only, but of catholics or papists likewise; (as the King hath excellently set forth.) Nay, it is not the case of princes only for anything that I can perceive, but of all subjects and private persons. For touching princes, let history be perused, what hath been the causes of excommunication; and namely this tumour of it, (the

deposing of Kings); it hath not been for heresy and schism alone, but for collation and investitures of bishopricks and benifices, intruding upon ecclesiastical possessions, violating of any ecclesiastical person or liberty. Nay, generally they maintain it, that it may be for any sin; and what King, Papist or Protestant, is there without sin? so that their difference wherein their doctors vary, that some hold that the Pope hath a temporal power immediately and precisely, and others but mediately and *in ordine ad spirituale*, is but a delusion and an abuse. For all cometh to one. What is there that may not be made spiritual by consequence: specially when he that giveth the sentence may make the case? and accordingly hath the miserable experience followed. For this murdering of Kings hath been put in practice, as well against papist Kings as protestant: save that it hath pleased God so to guide it by his admirable providence, as the attempts upon papist princes have been executed, and the attempts upon protestant princes have failed, except that of the Prince of Orange: and not that neither, until such time as he had joined too fast with the Duke of Anjou and the papists. As for subjects, I see not, nor ever could discern, but that by infallible consequence it is the case of all subjects and people, as well as of Kings; for it is all one reason, that a bishop, upon an excommunication of a private man, may give his lands and goods in spoil, or cause him to be slaughtered, as for the Pope to do it towards a King; and for a bishop to absolve the son from duty to the father, as for the Pope to absolve the subject from his allegiance to his King. And this is not my inference, but the very affirmative of Pope Urban the second, who in a brief to Godfrey, bishop of Luca, hath these very words, which cardinal Baronius reciteth in his Annals, *Non illos homicidas arbitramur, qui adversus excommunicatos zelo catholicæ matris ardentes eorum quoslibet trucidare contigerit*, speaking generally of all excommunications.

Here the rough copy ends abruptly. Between it and the fair and full copy which follows, another must have intervened, containing all the corrections made in the rough copy, and many more.

THE CHARGE OF OWEN, INDICTED FOR HIGH-TREASON IN THE KING'S BENCH BY SIR FRANCIS BACON, HIS MAJESTY'S ATTORNEY GENERAL.[1]

The treason wherewith this man stands charged is for the kind and nature of it ancient, as ancient as there is any law of England, but in the particular late and upstart, and in the manner and boldness of it new and almost unheard of till this man. Of what mind he is now I know not, but I take him as he was, and as he stands charged. For high treason (I tell you) is not written in ice, that when the body melteth and relenteth the impression goeth away; and yet repentance and remorse (if it be cordial and unfeigned) may make him fit for God's mercy or the King's.

The indictment hath been opened to the Jury, and the evidence itself will spend little time, for the proof is clear and in a manner confessed, and therefore time will be best spent in opening fully the nature and peril of his treason with the circumstances thereof, because the example is more than the man.

I will therefore by way of inducement or declaration open to the Court, Jury, and hearers five things.

The first is the clemency of the King; because it is news and a rare thing in his government to have a proceeding in this place upon treason: and it may be marvelled by some why upon so long an intermission it should light upon this fellow; being a person but contemptible, a hang-by of the seminaries, a kind of venomous fly that one would think should rather buz than sting.

The second is the nature and danger of this treason as concerning the fact; which of all other kinds of compassing the King's death I hold to be the most perilous and pernicious; as much differing from other conspiracies to slaughter the King, as the lifting up of thousands of hands against the King, like

[1] Gibson Papers, vol. viii. no. 15, a very fair transcript, the first two (and I think the first three) leaves of which appear to have been looked over by Bacon himself, there being two or three words corrected by his pen. The fourth shows no traces of his hand. And the fifth has certainly not been corrected by him; for in one place there is a space left blank, for a word which the transcriber could not read. It is worth observing also that the last sheet contains several erasures and interlineations, and appears also to contain some errors which are not corrected. Also that it is not numbered like the others. It may be a question therefore whether it was not cancelled, and whether the rest of the manuscript may not be in existence somewhere.

Briareus the Giant that had so many hands, differeth from the lifting up of one hand or a few hands, as it is in particular conspiracies.

The third point that I will speak to is the doctrine or opinion which is the ground of this treason; wherein I will not argue nor speak like a divine or scholar (I am scholar enough to know the disadvantage), but as a man bred in a civil life; nay I will never to give to that opinion that honour as to confute it. For howsoever (as it is in itself a scarlet and purple and bloody opinion) it hath got the credit of some scarlet and purple and bloody defenders, Popes and Cardinals, yet I for my part will never speak of it but as of an impiety that deserveth detestation and not contestation.

The fourth point I will speak to is the degree and special circumstances of this man's offence, which is certainly more presumptuous and insolent than I have known any other to have fallen into even in this kind, and hath as it were a greater overflow of malice and treason.

And fifthly I will take away an objection that may seem somewhat to qualify and extenuate this man's offence, in that he hath not simply affirmed that it is lawful to kill the King, but conditionally that if the King be excommunicate (as he is not) it is lawful to kill him; which I will shew you plainly makes little difference either in law or in peril.

For the King's clemency, I must say it, and it is a thing notorious, that the part or party which have captivated themselves to the see of Rome, (which is the fountain of this evil,) I mean the Papists, do receive and enjoy an exceeding great proportion of the King's mercy: 'tis their tenure, I can tell them: they hold by King James his mercy. Certainly there hath not wanted matter to irritate him to a just execution of his laws, even in the points capital. What shall we think or say of the Powder-treason? whereby the King and kingdom (the representative body or heart of it) should have been at once, as by a particular dooms-day, destroyed by fire. This alone had been enough to have turned judgment into fury. Let's go from powder-treason to paper-treason: What shall we say of that wicked and monstrous libel of Balaam's ass? that threatens the King in express words, that in that he was delivered from the Powder-treason he was not preserved, but reserved for a greater judgment; that

hath declared him (but it is but by the braying of that ass) to be Antichrist. Alas, he is seated here at London in a valley: where be the seven hills I marvel. These blasphemies, if they had light upon some King, he would have expiated and washed his name, not with water but with blood. Let's go on to that which falls under every man's observation and discourse, which is the growth of the Papists. They grow in number, and they grow in boldness and presumption, massing in every corner; the prisons have been made as oratories and chantries; whole streets of Papists (as I hear), and whole tracts and territories of them in some counties of this kingdom. The consistory here of Priests cannot pass from London to Wisbeach, but they must send forth their cartels and challenges to the University.[1] These things likewise might make a King conceive that the swellings and tumours of that party may at the last make a dangerous breach, if they be not stopped and beaten back.

Lastly, the very doctrines themselves of the Papists stand not at a stay, but they mount and swell up still more and more to suffocate and strangle the authority of Princes. The books of Joannes Mariana, of Zuares of Coimbra, of Dominicus Bannes, of Sinanca and the rest, they are of a new stamp, they are as a poison often distilled and sublimate. These books no doubt come to the King's hands; he reads them; in his great wisdom he seeth whereto they tend, namely to sour the lump of all Papists in their loyalty, and to make kingdoms the Pope's footstools, or perhaps to make *duo luminaria magna*, the Pope and the King of Spain. This also might irritate some King to think this evil incurable, and therefore that lenity is not the way. Nevertheless we see the King, out of his great magnanimity and clemency (to be admired), observes still Cæsar's rule, *Nil malo quam eos similes esse sui et me mei*, he remains still like himself, and leaves them to be like themselves; he rather bears the sword than draws it. What swarms of priests here be (which are so many pioners to undermine the State), how many receivers of them, no man doubts; and yet notwithstanding the edge of the law is not turned against them, but they have their portion in the King's mercy, and not in his justice; insomuch as I may say (as I have said of late upon just occasion) that I have served Attorney and Solicitor eight years, and yet this is

[1] See 'Nichols's Progresses of James I.,' vol. iii. p. 83.

the first evidence that ever I gave against a traitor. A strange thing,—bloody opinions, bloody doctrines, bloody examples, and yet the government scarce sprinkled with the blood of any offenders of this nature. This clemency of his Majesty, as it is to be magnified, so it may well show them the proceeding with this offender at this time is as it were upon a case excepted out of the general course of his Majesty's mercy.

As for the person and condition of this man, we see by miserable examples that these wretches that are but as the scum of the earth have been able to stir earthquakes by murthering of Princes, witness Ravaillac and his fellows, and we know that in infection a rascal may bring in a plague into a city as well as a greater man.

Now for the treason itself and the fact thereof, I said in the beginning that this treason in the nature of it was old. It is not of the treasons whereof it may be said *ab initio non fuit ita*, from the beginning it was not so. You are indicted, Owen, not upon a statute made against the Pope's supremacy, or other matters that have reference to religion: but merely upon that law which was born with the kingdom, and was law even in superstitious times, when the Pope was received. Then and ever the compassing and imagining of the King's death was treason, and the statute of 25 Ed. III. is but declaratory of the Common Law.

To search therefore this fact of treason, though indeed it have scarcely any bottom, but is as bottomless, I will observe to the Court and hearers two things.

1. The one that of all high treasons the conspiring and compassing of the King's death is the greatest.
2. That of all other compassing or conspiring the King's death, this case whereinto Owen is fallen is the greatest.

For the former, all men know and perceive that against hostile invasions and the adherence of subjects to the King's enemies, kings can arm and prepare. Rebellions, why they must go over the bodies of many good subjects before they can hurt the sole of the King's foot: but conspiracies against the persons of Kings are like thunderbolts that strike upon the sudden, not to be avoided. *Major metus a singulis*, saith he, *quam ab universis*. There is no preparation against them, and that preparation that is is a most miserable one,—namely a perpetual guard

and custody. It maketh the fortune of a King like one of the ancient torments which the heathen described to be in Hell: A man sitting richly robed at table, delicately served, solemnly attended, and a sword over his head hanging by a small thread. Therefore this treason the statute of 25 E. 3. placeth first, before adhering to the King's enemies, or levying war against the King, as the capital of capitals. They that have written of the privileges of ambassadors and of the amplitude of safe-conducts, have ever defined that if an ambassador or a man that cometh in upon the highest safe-conducts, do practise matter of sedition in a state, yet by the law of nations he ought to be remanded; but if he conspire against the life of a prince he may be justiced, *quia odium est omni privilegio majus.* Nay even amongst enemies and in the most deadly wars, yet nevertheless conspiracy and assassinate of princes hath been accounted villainous and execrable.

The manners of conspiring and compassing of the King's death are many. But the sowing of this seed that it is lawful, that it is but the execution of Justice, that it is the obeying of the decree of the Church, that it is meritorious for any son of Adam whatsoever to kill the King, this surmounteth all the rest and that for three respects.

First because it is grounded upon a motive of religion, which is a trumpet that inflameth the heart and powers of a man (above all things) to daring and resolution. And therefore Cardinal Peron subtilly under colour of a caution doth intimate a secret threat unto all Kings that will not submit themselves unto the Pope of Rome, signifying to them that it is in vain for them to think it is any fear of death or earthly tortures can warrant their safety; for that a votary that hath but an apprehension, though false and erroneous, of the pains of Hell in case he should break his vow when he hath vowed their death, doth but despise and scorn the executioner or tormentor here on earth, and thinks only what he shall do and not what he shall suffer. So here is the case of Princes, that fear of law and punishment, which be the ordinance of God as a fence about their thrones, is thrown down and trampled under foot.

Secondly, compare this with a particular conspiracy, and you shall see how much it goes beyond it. When a particular conspiracy is intended or plotted against the King by some one or some few conspirators, it meets with infinite obstacles or impedi-

ments. Commonly he that hath a heart to devise it hath not the heart to execute it; and he that undertakes it sometimes fails in courage; sometimes he fails in opportunity; sometimes he is touched with remorse. But to publish and maintain that it may be lawful for any man to kill the King, this is (I tell you) like the Devil called Legion, for it doth at once enter and search into the hearts of all that are any ways prepared or of any predisposition to be traitors; so that whatsoever fails in any one is supplied in many; if one man faint another will dare, if one man hath not the opportunity another hath, if one man relent another will be desperate.

Thirdly, particular conspiracies have their periods, and if they be not taken in their time they take vent and vanish; but this is a perpetuity of conspiracies; it includes in it springing conspiracies from time to time; so that I conclude the infusion of this opinion is of all high treasons the highest. And so much concerning the nature of the fact.

For the third point, which is the doctrine that upon an excommunication of the Pope with a sentence of deposing, that Kings may be slaughtered, and that it is justice and no murther, and that their subjects are absolved of their allegiance, and their realms exposed to spoil and prey: I said before I would not speak of it as to argue the subtlety of a question: it is rather to be spoken to by way of accusation of the opinion as impious, than by way of dispute as of a thing doubtful. Nay (I speak it in the presence of God) I think it deserveth rather some holy league amongst all Christian Princes of either religion, Papists and Protestants, for the extirping and razing of this opinion and the authors thereof from the face of the earth, as the common enemies of mankind, than the stile of pen or speech. Therefore in this kind I will speak to it a few words and not otherwise: and I protest if I were a Papist (as I hope I shall sooner go to my grave than to that Church) I think I should speak as much. Nay I should speak it with more indignation and feeling: for this horrible opinion is our advantage, and it is their reproach, and will in the end be their ruin.

This monster of opinion is to be accused of three most evident and most miserable effects.

First, of the slander it bringeth to the Christian faith, which is plantation of irreligion no better than a secret atheism.

The second is the subversion it produceth into all policy and government.

And the third is, the great calamity it brings in all countries where the Protestant religion is established upon the Papists themselves; whereof the more moderate sort (as men misled) are to be pitied.

For the first, if a man do visit the foul and polluted opinions customs or practices of heathenism, Mahometanism, and heresy, he shall find they come nothing near this—they fall much short of it. So as it is as the Apostle speaketh of the ,[1] a thing not seen amongst the heathen. Take the examples of most damnable persons amongst the heathen, the proscriptions if you will in Rome of Sylla and afterwards of the Triumvirs, what were they? They were but a handful of persons misaffected to that present state, that were exposed to every man's sword. But what is that to the proscribing of a King, and all that shall take his part, whole tribes and nations of people? Yea but what was the reward of a soldier that should kill one of the proscribed? Some small sum of money. But what is the reward now of one that shall kill a King? No less than the kingdom of Heaven. So that the endless reward of Christ's blessed passion is prostituted unto those the instruments of the passion of bloody prelates.

The Mahometans make it a part of their religion to propagate their sect by the sword; but yet still by honourable wars, never by villanous and secret murders. Nay, I find that the Saracen prince, of whose country the name of the Assassins, which is now familiar in the Civil Law, is derived, which had divers votaries at Court, which he sent and employed to the killing of divers princes in the Estate[2]; by one of whom Amurath the first was slain, and Edward the first of England was wounded, was put down and rooted out by common consent of the Mahometan princes.

The Anabaptists, it is true, come nearest. For they profess the pulling down of magistrates, and the monarchy of them that are inspired; and they can chaunt the Psalm *To bind their kings in chains and their nobles in fetters of iron.* This is the glory of that saint, a very express image of the Pope's authority that he claimeth it. *Multum æquum est* (saith Egidius Bella

[1] Blank left in MS.

[2] So in MS.

Mora) *et reipublicæ*[1] *valde expediens ut sit aliquis supremus monarcha, qui Regum excessus possit corrigere et de ipsis justitiam ministrare.* It is great reason and very expedient for the Commonwealth that there be a supreme monarch to correct Kings and do justice upon them. Infinite other are there of like passages of common stuff; but it is true, here is the difference between the Anabaptists and the Consistory of Rome, that the one is a furious and fanatical folly and the other is a sad and meditated tyranny. The one *imagines mischief as a vain thing*, and the other *imagines mischief as a law.*

As for the defence which the more moderate sort of them do make, that the Pope hath this power *in ordine ad spirituale*,[2] it doth but aggravate the impiety and turneth it from a cruelty towards man to a blasphemy towards God; for evil is never in order towards good. So that it is plainly to make God the author of evil, and to say with those that St. Paul speaketh of, *Let us do evil that good may come thereof*, of whom the Apostle says excellently *That their damnation is just.*

Here the fair copy ends abruptly in the middle of the page. If we could have seen the conclusion, we could have judged better what the intention of the proceeding was. But I fancy that in this case also, as in those of Talbot and Peacham and St. John, the object of the Government was to establish and make known the law with regard to such offences—to make it known by public and formal trial that the promulgation of such doctrines was an offence by law punishable—not to carry it to any extremity against the particular offenders. The result of the trial we learn from Chamberlain; who writes to Carleton on the 20th of May 1615:—

This term draws to a conclusion, and hitherto hath brought forth little novelty, only young Owen that I wrote of was arraigned at the King's Bench on Wednesday, and condemned, for divers most vile and traitorous speeches, confessed and subscribed with his own hand; as among others that it was as lawful for any man to kill a King excommunicated as for the hangman to execute a condemned person. He could say little for himself, or in maintenance of his desperate positions, but only that he meant it not by

[1] In MS. "(sayeth *Egidius*) *Bella mora et reip.*," etc. I do not find the name of this writer in any of the common bibliographical dictionaries, nor in the Catalogue of the British Museum Library. But among the Selden MSS. at Lincoln's Inn (XIII. (XII.) 27) there is a list of the authors quoted in the *Tractatus Pacis Universi*, a work published in Venice in 1584, which contains among the rest, "Egidius Bellamera. Beneficiorum Permutatio T. 15. P. 1. fol. 190."

[2] The MS. has *in ordine spirituali.*

the King, and that he holds him not excommunicate. He is not yet executed, nor I hear not when he shall.[1]

Here again the King was content with obtaining the judicial sentence. Owen remained indeed in prison for three years; but no further severity was used towards him, and in July 1618, the Spanish Ambassador obtained his full pardon, on condition that he left the country.[2]

4.

I do not know whether the occasion upon which Owen delivered himself of these treasonable doctrines had anything to do with the benevolence. If it had, it was the last of the troubles which grew out of it. The amount of the collection, though it probably fell short of the expectations of the movers, and very far short of what was wanted, was nevertheless no inconsiderable relief to an empty exchequer. Forty or fifty thousand pounds, though not enough, was not to be despised. It helped the present, and I do not find that it made the future more difficult. But the difficulty, though not aggravated, was still there. The benevolence may be said to have supplied means of meeting the extraordinary charges for about a year. But as it could not be repeated, the old question recurred—How was the next year to be provided for? and before the end of the vacation that question was once more formally referred to the Council. Concerning Bacon's views on the subject I shall be able in the next chapter to produce some new and important information. But I must first dispose of a few matters of smaller moment which belong to the summer of 1615.

The first that comes relates to one of those ordinary official businesses, the particulars of which it would be vain to seek and probably useless to find. Sir Gilbert Haughton had received a warrant for a patent, to which some objection had been taken by the Lord Chancellor, who hesitated to seal it. The King had directed his Attorney and Solicitor to inquire about it and learn the cause of the stay, and this is their report.

It seems that the objection (whatever it may have been) was ultimately waived. For I find in the Calendar of State Papers, under date 31 July 1615, the following entry:—

"Grant to Sir Gilbert Haughton of three fourths of the fines accrued

[1] S. P. Dom. James I., vol. lxxx. no. 102.
[2] Gardiner, ii. p. 194. The pardon is dated 17 July 1618.

to the King during the last ten years in the Common Pleas, which have been kept back after verdict, to be recovered by him."[1]

To our very good friend Mr. John Murray, of his Majesty's Bedchamber.[2]

Good Mr. Murray,

According to his Majesty's pleasure by you signified unto us, we have attended my Lord Chancellor, my Lord Treasurer, and Mr. Chancellor of the Exchequer, concerning Sir Gilbert Haughton's patent stayed at seal; and we have acquainted them with the grounds of the suit, to satisfy them that it was just and beneficial to his Majesty. And for any thing we could perceive by any objection or reply they made, we left them in good opinion of the same; with this, that because my L. Chancellor (by the advice as it seemeth of the other two) had acquainted the Council table (for so many as were then present) with that suit amongst others, they thought fit to stay till his Majesty's coming to town, being at hand, to understand his furder pleasure. We purpose upon his Majesty's coming to attend his Majesty, to give him a more particular account of this business, and some other. Meanwhile, finding his Majesty to have care of the matter, we thought it our duty to return this answer to you in discharge of his Majesty's direction. We remain,

Your assured friends,

Francis Bacon,
Henry Yelverton.

6 Jul. 1615.

5.

The next relates to a business of which we shall hear more, and which requires a few words of introduction.

The company of Merchant Adventurers, whose charter gave them a monopoly of the cloth-trade with the Netherlands, were licensed to export (statutes to the contrary notwithstanding) cloths undyed and undressed. This threw the clothworkers and dyers of London out of work; who thereupon petitioned the King that the statutes might be enforced and no licences granted. The King referred the petition to the Council; before whom, in March 1612-13, the parties were ordered to appear and give their reasons on both sides. It seems that the petitioners were thought to have the best of the ar-

[1] Cal. of S. P. Dom. James I., p. 299.

[2] Balfour MSS.

gument; for in the following year (though the reasons on the Company's part were strengthened by the offer of a considerable profit to the Crown) a proclamation was issued (23 July 1614) prohibiting the exportation of cloths undyed and undressed after the 2nd of November; and revoking all special licences for the same which had been granted to the Merchant Adventurers and others.[1] The Merchant Adventurers, knowing by experience that the market would not bear such a restriction, shortly after resigned their charter. But there are always men who know in theory how to do anything which they have not had to do in fact; and a new Company was formed which undertook to conduct the trade so as to keep in the hands of the English workman the dyeing and dressing as well as the weaving. A short trial showed them that they had undertaken too much. The clothiers complained that they could not sell their cloth, and the cloth-workers that they had less work than before: and they were obliged to apply to be relieved from the prohibition to export undyed and undressed cloths until the workmen were provided.[2] They did not ask to be released from their undertaking to export a certain quantity dyed and dressed every year; and they still held to their promise of recovering the whole trade in time. Their charter bound them to export 6000 cloths dyed and dressed in the first year: they were prepared to export 12,000 in the second: hoped to undertake 18,000 in the third; and in time to dye and dress all the cloth they exported, according to their charter.[3] But in order to set the trade on its legs it was necessary at first that they should have liberty to export "whites." To keep a trade within the country and out of the foreigner's hands, was in those days allowed by everybody to be a national benefit, whatever it might cost; and the Government, believing in the promises of the New Company, agreed to give them a fair trial. A "grant of incorporation with divers privileges to the New Company of Merchant Adventurers" is dated 29 August 1615, and this, I presume, was the grant to which Bacon's next letter refers.

A LETTER TO THE KING, CONCERNING THE NEW COMPANY. 12 AUG. 1615.[3]

It may please your most excellent Majesty,

Your Majesty shall shortly receive the bill for the incorpo-

[1] Cal. S. P. Dom. James I., p. 247.

[2] Chamberlain to Carleton, 23 Feb. 1614–15: and 25 May 1615. S. P. Dom. James I., vol. lxxx. nos. 38, 108.

[3] Answer of the New Company to the Council, 7 June 1615. S. P. vol. lxxx. no. 112.

[3] Gibson Papers, viii. f. 20. Fair copy, in Bacon's hand.

ration of the new company, together with a bill for the privy-seal, being a dependency thereof: for this morning I subscribed and docketed them both. I think it therefore now time to represent to your Majesty's high wisdom that which I conceive and have had long in my mind concerning your Majesty's service and honourable profit in this business.

This project, which hath proceeded from a worthy service of the Lord Treasurer, I have from the beginning constantly affected; as may well appear by my sundry labours from time to time in the same: for I hold it a worthy character of your Majesty's reign and times; insomuch as though your Majesty mought have at this time (as is spoken) a great annual benefit for the quitting of it, yet I shall never be the man that should wish for your Majesty to deprive yourself of that beatitude, *Beatius est dare quàm accipere,* in this cause: but to sacrifice your profit (though as your Majesty's state is it be precious to you) to so great a good of your kingdom: although this project is not without a profit immediate unto you, by the increasing of customs upon the materials of dyes.

But here is the case. The new company by this patent and privy seal are to have two things wholly diverse from the first intention, or rather *ex diametro* opposite unto the same; which nevertheless they must of necessity have, or else the work is overthrown: so as I may call them *mala necessaria,* but yet withal *temporaria.* For as men make war to have peace; so these merchants must have licence for whites, to the end to banish whites; and they must have licence to use tenters, to the end to banish tenters.

This is therefore that I say. Your Majesty upon these two points may justly and with honour, and with preservation of your first intention inviolate, demand profit in the *interim,* as long as these unnatural points continue, and then to cease. For your Majesty may be pleased to observe, that they are to have all the old company's profit by the trade of whites; they are to have again, upon the proportion of cloths which they shall vent dyed and dressed, the Flemings' profit upon the tenter. Now then I say; as it had been too good husbandry for a king to have taken profit of them, if the project could have been effected at once, as was voiced; so on the other side it might be perchance too little husbandry and providence to take nothing of

them for that which is merely lucrative to them in the meantime. Nay I say further, this will greatly conduce and be a kind of security to the end desired. For I always feared, and do yet fear, that when men by condition merchants, though never so honest, have gotten into their hands the trade of whites, and the dispensation to tenter, wherein they shall reap profit for which they never sowed, but have gotten themselves certainties, in respect of the state's hopes, they are like enough to sleep upon this as upon a pillow, and to make no haste to go on with the rest. And though it may be said, that that is a thing will easily appear to the state, yet no doubt means may be devised and found to draw the business in length. So that I conclude, that if your Majesty take a profit of them in the *interim* (considering you refuse profit from the old company), it will be both spur and bridle to them, to make them pace aright to your Majesty's end.

This in all humbleness, according to my vowed care and fidelity, being no man's man but your Majesty's, I present, leave, and submit, to your Majesty's better judgment; and I could wish your Majesty would speak with Sir Thomas Lake in it; who, besides his good habit which he hath in business, beareth methinketh an indifferent hand in this particular; and (if it please your Majesty) it may proceed as from yourself, and not as a motion or observation of mine.

Your Majesty need not in this to be straitened in time, as if this must be demanded or treated before you sign their bill. For I foreseeing this, and foreseeing that many things mought fall out which I could not foresee, have handled it so, as with their good contentment there is a power of revocation inserted into their patent. And so commending your Majesty to God's blessed and precious custody, I rest,

Your Majesty's most humble
and devoted subject and servant,
FR. BACON.

Gorhambury this
12th of Aug., 1615.

6.

A letter found by Birch among the manuscript collections of Robert Stephens, but not included in either of his printed collections,

and dated 20th September of this year, relates to a tragical accident which had just happened. Francis Lord Norris and Lord Willoughby of Eresby had had a quarrel. During an interview between them in a churchyard at Bath, they came from words to blows, and Lord Norris drawing in self defence had the ill-luck to kill one of Lord Willoughby's servants. The Coroner's Jury (9 September) found it manslaughter. Expecting to be put upon his trial, he wrote (it seems) to Bacon, to bespeak his favour. And this is Bacon's answer.

SIR FRANCIS BACON TO LORD NORRIS, IN ANSWER TO HIM.[1]

My Lord,

I am sorry of your misfortune; and for anything that is within mine own command, your Lordship may expect no other than the respects of him, that forgetteth not your Lordship is to him a near ally, and an antient acquaintance, client, and friend. For that which may concern my place, which governeth me and not I it, if any thing be demanded at my hands or directed, or that I am *ex officio* to do any thing; if I say, it come to any of these three, for as yet I am a stranger to the business, yet saving my duties, which I will never live to violate, your Lordship shall find that I will observe those degrees and limitations of proceeding which belongeth to him that knoweth well he serveth a clement and merciful master, and that in his own nature shall ever incline to the more benign part; and that knoweth also what belongeth to nobility, and to a house of such merit and reputation as the Lord Norris is come from. And even so I remain,

Your Lordship's very loving friend.

Sept. 20, 1615.

Lord Norris's own account of the matter was that he intended no quarrel, but was assaulted unexpectedly, that Lord Willoughby's man drew upon him, and that he slew him in pure self-defence.[2] And I suppose this was found to be true; for we hear no more of the trial; and he was presently pardoned.[3]

[1] From the collections of the late Robert Stephens, Esq.
[2] S. P. Dom. James I., vol. lxxxi.; Cal. p. 306.
[3] Letters of Lord Carew to Sir Thomas Roe; Camd. Soc.

CHAPTER VI.

A.D. 1615. ÆTAT. 55.

1.

THE length of time which passed after the dissolution of the last Parliament before another was called, coupled with the shifts to which the Government was driven in the meantime for raising money, has given rise to an impression that it was the deliberate intention and policy of the King to dispense with Parliaments altogether, and try to carry on the government without. But though to those who look only at the surface of events without observing their causes there may seem to be some colour for this opinion, we have conclusive evidence that it was not so. If there was any time when James might be fairly suspected of a determination to dispense with Parliaments, it was immediately after the unfortunate issue of the last; for the conciliation of which he had gone, as he thought, so far in concessions. Yet within less than sixteen months we find him seriously engaged with his Council in consultations and preparations for calling another.

Of course I do not impute this to any romantic desire on his part to put limitations upon his own authority. The same financial embarrassment which made Parliaments so difficult to deal with obliged him to face the difficulty. He did not see any hope of effectual remedy by any other means; and though he disliked the necessity he was prepared to submit to it. The fact is not altogether new; for Mr. Gardiner has duly recorded it, though I cannot think that in his view of James's proceedings and policy he has taken it duly into account. But I am fortunate in being able to supply some fresh evidence on the subject which is both new and material.

With whom the resolution originated,—whether with James himself, or with his Privy Council, or with some private adviser,—does not clearly appear. But it was, if not suggested, at any rate very strongly supported by Bacon, in a memorial or letter of advice which he addressed to the King about this time. If we knew the

exact date of it we should be able to judge whether it was this memorial which induced the King to refer the matter to his Council, or whether the knowledge that it had been referred to the Council induced Bacon to write the memorial. I incline myself to the first supposition, because I think he could hardly have entered so fully and carefully into the whole question without some allusion to the deliberations of the Council, if he had known that they were going on. The point is not however of much importance; for whatever the occasion may have been, the paper itself contains an elaborate discussion of the expediency of calling another Parliament and the measures to be taken by way of preparation,—submitted by him privately to the King, and to be taken therefore as representing his own personal opinion. A manuscript copy of it, in a handwriting of the time, or not much later, had found its way into the Library of the Inner Temple, where it remains. And it is a singular and significant fact that, though entered in the printed catalogue under Bacon's name, with the title (not quite correct indeed, but not on that account the less inviting to curiosity) of "Sir Francis Bacon on Parliaments," no notice has been taken of its contents, so far as I know, by anybody.[1] It is true that the name does not appear upon the face of the transcript (which seems to be the work of a copyist); but on the outside leaf is written, in the hand of the transcriber, "Concerning a Parliam[t]," and underneath, in another hand, "Sir Francis Bacon;" and the internal evidence is as conclusive as to the authorship as internal evidence can possibly be. As a piece of contemporary testimony concerning a very important passage of history which is very little understood, its value will not be disputed even by those who are not prepared to accept it as conclusive. It is the report of one who was in a particularly good position to observe what passed, for the information of one whom it deeply concerned to understand the case rightly, and who besides his personal knowledge had the command of reports from many other quarters to check it by. In my own account of the passages to which it relates, though I have had the advantage of being acquainted with it and bearing it in mind, I have endeavoured to make out the story from evidence quite independent of it, and I do not think I have admitted into the narrative any single fact which rests upon this authority: so that those who distrust Bacon's powers of observation and judgment in such things can correct his report for themselves where they find reason.

Papers of this kind are apt to be lost as well as saved by the very

[1] Since this was written, Mr. Gardiner has mentioned it as a valuable paper. 'Prince Charles and the Spanish Marriage,' vol. i. p. 67, note.

thing which gives them their peculiar value. Being too confidential to go into the general collection, they are laid by in some more secret place and forgotten, or they are lent to a friend with a special caution to keep them private, and so become separated from their companions and lost. And even if they escape destruction, yet as time goes on, those into whose hands they fall are less and less likely to know what they are about and what their value is; so that even after they are found, the chances are that they are still as much lost as ever. The original of this paper had the luck long ago to fall into the hands of somebody who saw that it was worth copying; and the copy being now, by permission of the Benchers of the Inner Temple, printed in its proper place among Bacon's writings of business, I hope it may be considered safe from all further risk.

The title, I ought to add, has been inserted by myself. The manuscript has neither title nor address, nor signature, nor date.

A LETTER TO THE KING ADVISING HIM TO CALL A PARLIAMENT.[1]

Concerning a Parliament, if I were to give opinion to a King whose distastes were stronger with him than his occasions, I confess I should be doubtful and reserved. But because his Majesty is a prince of so great judgment that can give every event his true cause, and that can collect upon things that formerly have not so well succeeded as well what to amend as what to avoid, I encourage myself that I may deliver mine opinion as well safely as freely;—intending when I speak of safety, of being saved in his Majesty's good conceit and favour; for other peril I esteem not.

Whosoever therefore shall dissuade a Parliament, cannot deny thus much,—that a Parliament is the ancient and royal way of aid and provision for the King with treasure (for the word Supply and Supply of wants I am almost fallen out with).

They will likewise grant that it is easier to create will than means; neither can they show any other means sufficient, but it is of more casual and slow coming in and hath not conjoined with it the point of *honour and reputation*, which doubleth the rest; or rather surmounts it in many parts.

But they will say the experience and success of the two last Parliaments doth intimidate and astonish them to try the same means again, except they had other foundations than they then had. Wherein on the other side I do profess simply and

[1] Inner Temple Library, no. 538, vol. xxxvii.

plainly; not as one that affecteth paradoxes or desireth to speak confident or strouted speeches, but ingeniously; that nothing doth encourage me more than that which I do remember of those Parliaments; not indeed alone, but joined also with the remembrance of former Parliaments further back. And this is no other collection than Demosthenes in the like cases doth often use and iterate, when he saith in divers places *Quod ad præterita pessimum id ad futura optimum;* which passage always he adviseth when things have gone amiss by accident and error or mishandling, and not of their proper indisposition. For nothing is to a man either a greater spur or a greater direction to do over a thing again, than when he knows where he failed. And I am of the same opinion in this matter of Parliament; in which subject I ought not to be novice-like or ignorant, having now served full twelve Parliaments; out of which this one advice may flow which I shall now give; which is so far from tending to any acting, or minting, or packing, or canvassing, or any the like devices, as it tendeth wholly to the restoring that great Council to the natural use and ancient dignity and splendour thereof, from which it hath in latter time, I will not say degenerated, but certainly receded; whereby it will also appear that we shall need no other foundation than that that is laid in a blessed time, which is a good King and good people; and that there is not requisite any great or laborious engine to draw kindness out of the affections of the subjects; but that it is only like the opening of a springhead, which with a little cleansing will run frankly of itself. And yet I do not see but that there is a kind of co-operation of some beneficial accidents happened since the last Parliament, which advantages added to the correction of former errors will make the matter assure itself; and that is the best kind of undertaking. But because it is first in nature to remove impediments, and then to use advantages, I will speak first of the impediments or errors, and then of the advantages.

First therefore, not to speak of the Parliament in Queen Elizabeth's time, in whose reign things were so well settled and disposed, as if she demanded anything it was seldom denied, and if she pretended any it was never inquired; I will speak only of the Parliament in the third of the King; at which Parliament the King had granted unto him three subsidies and six

fifteens, payable in three years; notwithstanding that the extraordinary charges of his first coming in mought be well satisfied by the remaining payments of the subsidies granted to Queen Elizabeth, and incurring in his Majesty's time; notwithstanding that there was at that time a very still and calm of peace, without any noise of wars; notwithstanding there was no offer or speech of any gift or liberality from his Majesty to the subjects, save only an ordinary pardon in the end of the Parliament, prepared as in former times; notwithstanding that it was a Parliament of augmentation of revenue unto the Crown in respect of the attainders that passed by Parliament of the Powder traitors, and divers forfeitures and confiscations granted by the two great statutes of Recusants; and notwithstanding lastly that it was a stout and free session of Parliament, and the King noways more absolute than scarce three years' reign of a moderate prince could make him. So as I desire no better glass of the affections of the subjects of England in their own nature to help their King than this;—A strange thing that they should without any occasion of war or offer of retribution begin with the King where they left with Queen Elizabeth; who reigned twenty-seven years before she had so much as a double subsidy, and that by half-payments in four years; and yet the manner of this is as worthy to be noted as the matter; for the ancient majesty of the kings of this realm was then preserved, in that those subsidies were never demanded nor moved from the King, much less made the business or errand of the Parliament; but after the Parliament had sitten a good while, an honest gentleman (by name Sir Edward Montague) stood up and in a plain and familiar manner moved for two subsidies and four fifteenths; concluding with these plain words, that so much he thought would content, and less would not be well accepted; whereupon the two subsidies passed upon question the same day, and yet nevertheless upon conference with the Lords touching the occasions of the King, and by persuasion of some good servants of the King's which were gracious with the House, and chiefly out of their own good affections, came on afterwards to three. But in the succeeding Parliament in 7°, when that the Lord Treasurer that last was had out of his own vast and glorious ways to poor and petty ends, set afoot the Great Contract, like the Tower of Babylon, building an imagination as if the King should never after need his people

more, nor the people the King, but that this land should no more be like the land of promise watered by the dew of heaven, which sometimes was drawn from the earth and sometimes fell back upon the earth again; but like the land of Egypt watered by certain streams and cuts of his own devising; and afterwards either out of variety, or having met with somewhat that he looked not for, or otherwise having made use of the opinion, in the end undid his baby that he had made,—then grew the change. For after that the Parliament was once in taste with matter of bargain and contribution and retribution and this same *quid pro quo*, the generous disposition of free giving unto the King, and the politic arguments of persuading it upon reason of estate, became dry things, and the endeavour grew to be to draw from the King, and to buy him out of certain profits and regalities which lie as it were intermingled in the subjects' interest; so that in conclusion, though the King's wants had been (beyond that that was convenient) displayed and hanged up as it were in tables before all men's eyes divers months together, yet that Parliament ended in the gift of one subsidy and one fifteenth.

Then in the last assembly of Parliament after four years' intermission, when the realm had paused from subsidies a good while, and when it had been time to forget these byways and to have reduced things to ancient course, the rather for that the leader of those ways was gone to another world, then did certain gentlemen (whom I love and prize in particular, but nevertheless I will never spare in this) being but merely empirics of Parliament, and those whose wisdom reached but to that they observed last, not well seen in rules of estate and the pulses of people's hearts, and out of zeal perhaps to do well overvaluing[1] their strength, revive[2] again the former courses of merchandising, and added a far greater error of new.

For first, it being given out and professed that the end and cause of calling a Parliament was to pay the King's debts and supply his wants, which in itself did great hurt by putting upon the King the person of a mendicant, and was contrary to the honourable form of all former Parliaments (wherein were the cause of want never so manifest it was never acknowledged by the State, but fell in upon the bye), they straightways fell into the old track of gathering together certain heads of donatives

[1] *undervallueing* in MS. [2] *revived* in MS.

and graces whereby they thought fit to invite the Parliament to an ample gift; which being propounded, I cannot forget that his Majesty (even at that time) seemed in heart and in his own proper opinion to be against it; wherein he showed his great wisdom and foresight; and nevertheless being persuaded unto it, he did likewise as much as the wit of man could devise help it, in carrying it in the best form by disclaiming all merchandising and making it but a mutuality or interchange of love, the Parliament having in contemplation the case of the King, and the King having in contemplation the case of the people, and not as in case of contract, either party looking to his own advantage. But yet it was not possible to disguise or overcome the nature of things, but that it fell into the old way. For though it were not matter of mere contract as in the former Parliament, yet it was a kind of valued gift, which made men take weights and measures into their hands, and those not the truest; so that in conclusion those graces grew to be despised and to be termed *Veneficia* instead of *Beneficia*, and that cedars were cut down and shrubs given to browse upon, with such other unfit phrases: which error was likewise accumulated with another circumstance which did likewise great hurt; in that they were all offered, and not first desired or sued for; contrary likewise to his Majesty's own opinion, who ever thought that offer would be vilified, and that it is appetite that makes sweetness.

But the second main error (as I said) was the greater; which was that, through indiscretion or vain-glory or what it was, it was voiced abroad and carried as a thing notorious, insomuch as people (who evermore are godfathers to such things) gave it the name of *Undertaking* or *Undertakers*,—that *certain persons had undertaken to value themselves with the King by the service of preparing and inducing a Parliament to pay his debts and supply his wants;* which did stir up a kind of indignation even in those that were very well and honestly affected, that a house of Parliament should become the shadows and followers of a few, and that thereby they should at once leese money, liberty and thanks. But then this was taken hold of also and exasperated by all such as under this fair pretext were glad and took boldness to cover and convey their own secret averseness towards the King's business and other their private drifts.

Upon this root also grew divers branches of inconvenience; as

first that there was great suing, standing, and striving about elections and places; which joined with the general noise of this undertaking, and likewise with the opposition thereunto made by others, made the wisest and ablest persons of the kingdom not willing to be of the House; as loth to offer themselves to competition and fearing lest it mought be a turbulent and factious Parliament, and therefore choosing rather to sit quiet at home. And these are the persons in whose hands the King's business ever prospereth best, as being most interessed in the State and most respective in their opposing.

Upon the same ground it came to pass that three parts of the House were such as had never been of any former Parliament, and many of them young men and not of any great estate or quality; and they are wonderfully mistaken in their principle who think that such men will give most because they have least; for such are ever more forward to deny and oppose upon bravery, than the gentlemen of the country or wealthy merchants are upon dryness. And besides, that greenness of the House leeseth the modesty and gravity by which great matters have passage, and turneth it into a kind of sport or exercise; which also is a thing most pernicious (if it be truly looked into) unto the liberty of a Parliament; for howsoever they may ruffle once or twice, yet if they leese their gravity and dignity they will grow in contempt both towards the King and towards the people abroad.

Another inconvenience was by the said occasion that those gentlemen and their friends and associates (who to do them right were of the best voices of the House and the best able to persuade if they stood clear and unprejudged) were by this means turned unprofitable and of no credit in the House; so that every one of them could have done more in the Parliament before than all together[1] could do this Parliament.

There was also another shrewd dependence of this last inconvenience; which was that the same persons, finding they had lost the House, were forced to regain reputation and to ingratiate themselves (as they term it) with the House by being forward and running violent courses in causes of popularity, as in the matter of Impositions and other pretended grievances, wherein the King's power or profit were interessed; and so upon the matter but to beg credit one day to spend it another;

[1] *altogether* in MS.

wherein they found themselves only able to row with the stream, but had no arms or power to row against it. But in the meanwhile this bred a habit of boldness and immoderate liberty to oppose in the King's causes; and the King himself was fain to pass over divers things which it had been fit to stop at the beginning, upon expectation that the end would have made amends for all.

Another inconvenience that followed was the manifest distraction which reigned in the House between the Undertakers and the Anti-undertakers, which made the House more troubled with their appeals one against another than with anything else, and made them also look rather upon the persons one of another how they were sided, than regard the matter they spake; crossing the matter for the person's sake; which did cut off all means of persuasion and consent.

But that which was of all others most pernicious, this distraction had entered into the King's house and council and amongst his great men; insomuch as my Lord Privy Seal, who had discounselled the Parliament and hated the persons almost of the Undertakers, what for the glory of his opinion and what for the blasting of their services, declared himself in that manner as he set up a kind of flag unto all those that[1] opposed the Undertakers and would frustrate the success of the Parliament.

Lastly, contrary to all custom of Parliament and to the stirring of infinite animosity and distaste, the King's business was urged to be put to a point at the very first: and this was done that the weakness of the Undertakers, whose strength was more in noise than in strength,[2] mought not be perceived before the King's turn was served; which point of time being unpleasing to every man and therefore soon overruled, made the House to find their strength; which stumbling at the threshold was never after recovered.

This then being a true description of the last Parliament, I see no reason why it should cast a fear for the holding of another, no more than the opening of a body dead of a disease ought to fear a man in health; but it may warn him somewhat what to observe in the regiment of his health.

Of this that hath been said there is a double use; the one for removing of too much apprehension or discouragement concern-

[1] Om. MS. [2] So in MS.

ing the calling of a Parliament; and the other because the notation of those errors carrieth in itself by rule of contrary a kind of direction or platform, what course is now to be held. For I do not think there can be a more true or compendious advice how to carry things concerning a future Parliament than this—to do just contrary to that that was last done.

Upon the instruction of these errors for the time past, I shall give an affirmative counsel for the future. But first I must interlace that which I mentioned before; which is some advantages which have happened since the last Parliament; that I may ground my advice upon both.

These are, first the great continuance of time of intermission of subsidies; which being four years the last Parliament, will now run on before a Parliament can be called to six years; a time unto the realm of greater rest and pause from payments than hath been known in this age; whereby it is the more probable that they will fall on to remember their duty in this kind.

The next is, (to speak plainly) I do not think but the breaking up of the last Parliament (what inconvenience soever otherwise it mought partake) since it is past it had this good, that it will be a kind of discipline to a future Parliament to contain themselves more and to spend the time better; and likewise the particular punishment and questioning of Nevell, Chute, and Hoskins, will be some lesson of moderation in speech; and the punishment of Sharpe and Cornwallis will be a caution of plotting or packing to trouble the waters.

But the great accident which hath intervened is the bending of Christendom to the old ply and bias of war in the Low Countries, and of divisions in France, with a dependency of the party reigning upon the council of Spain; whereunto now add a further point which is new and of more alarum than in former times; that is, the straight conjunction by marriages of France and Spain; upon which state of Europe I may conclude as of a thing that I see before mine eyes, that although such a shimering as the war of Cleve was too weak to work any effect, yet these things will give fire to our nation and make them aspire to be again umpires of those wars; or at least to retrench and amuse[1] the greatness of Spain for their own preservation. And

[1] So in MS.

this is a subject worthy for counsellors of state and others of quality to work upon to move a Parliament, which is ever best persuaded by somewhat that is above their capacity; and not to stand as in a shop to set out the King's bills of graces, whereof every man will take upon him[1] to discern, and to value his own judgment by disvaluing the pieces.

Now therefore I will proceed to an affirmative concerning those wishes and advices which I have thought of for a future Parliament, which I do no less in heart than for form's sake submit to his Majesty's better judgement. And although perhaps they may seem *antiqui moris*, yet I persuade myself they will master the time, and be far more effectual than those counsels which may seem more agreeable to the modern arts. And I would they were as well able to endure the touch of his Majesty's judgment as I am sure they are worthy of his greatness.

First therefore let there be an utter silence, as of the King's part, of matter of money or supply, or of the King's debts or wants; they are things too well known. And let not the King doubt but some honest man will, after they have sit awhile, fall upon them, though it proceed not from the King. Nay I will presume further to say (as putting a case speculative, which in act and event I hold an impossibility), if subsidies should never be given nor spoken of in the next Parliament, yet the meeting and parting of the King and his Parliament with due conservation of the majesty and authority of the King, which heretofore hath suffered, and will ever suffer as long as money is made the mere object of the Parliament, and without heats or contestations or oppositions between him and his Parliament, I hold to be a thing of invaluable consequence, both in reputation and towards the substance of future affairs. For Kings, as my Lord Treasurer was wont to say, never ran away for debt; and if there should be a Parliament which should not give (the King's case being known as it is), and be without a pretext for so doing, then the King is justified in taking all just and lawful courses for making the best of his own;—a thing rather to be pointed at than[2] discoursed upon.

Secondly, the better to prevail in opinion that the King can subsist of himself without troubling his people, (which is the

[1] *them* in MS. [2] *nor* in MS.

point hath hitherto been wanting, to the great prejudice of the King's proceedings,) although it be enough unto the purpose in hand that it be kept as a secret of state and men suffered to think of it diversely, so that the King proceed with confidence as if he saw his way and were resolved what to do; so yet, not to make it too mystical, two things may be done; the one, to put it upon the profit[1] patrimonial expected from this enfranchisement of copyholds and improvement of wastes; adding (for though the King should never do it, if such be his mind, yet he may make use of the opinion,) the disforesting of forests in the remote parts; and likewise upon a revenue upon wards of Recusants. The other, to turn it also upon the opinion of some great offer for a marriage of the Prince with Spain; not that I shall easily advise that that should be really effected; but I say the opinion of it may have singular use, both because it will easily be believed that the offer may be so great from that hand as may at once free the King's estate; and chiefly because it will be a notable attractive to the Parliament, that hates the Spaniard, so to do for the King as his state may not force him to fall upon that condition.

Thirdly, it must be foreseen in particular that this proceeding of the King according unto his greatness, and (as they speak) *a cavallo*, be not disgraced and turned as it were to a scorn by any poor and mean shift to provide money while the Parliament sits, as by any petty borrowing or the like; but absolutely the King must have money in his purse, and not be noted for any pressure of want at that time. Wherein other means may be thought of, but two things do recur to my remembrance at the hardest.[2] The one is, that although I do commend my Lord Treasurer much for determining of the commission of sales, wherein the King was at much loss in the bargains, (though less at the latter end than at the first; but then the loss was chiefly in that men culled out the best parcels, so as the smallest things gave the greatest loss); yet in case of necessity, and for the preservation of the present which includes the future, I could wish that some three or four great and entire things well and throughly surveyed were sold at a just price to some great persons, to bring a gross of 40,000*l.* or 50,000*l.* of ready money against such a time. The other is, that the King may make as much more by the

[1] *perfitt* in MS. [2] *hardst* in MS.

creation of some eight Barons; which course though I do not in my own judgment approve, no more than I do the other of sale [of] lands, if greater [evils] could be as well avoided as these things might be disliked; yet so much I see, that this number may be like enough to be drawn on by one and by one in suits, and the King never the better for it. And I call to mind how Guicciardini censures Pope Clement for not raising money by creating Cardinals until Bourbon were at Rome gates; neither do I see that it makes any great difference to the people or country whether a man of 5000*l.* land be a Baron or a Knight, but rather that it will strengthen the King's service and the like in the Upper House.

Fourthly, for any inviting of the Parliament to give by offer of any flowers or sprigs of the Crown or Prerogative, it is that that I have already condemned; or rather experience hath condemned, not I; and besides in the course that I take, it falls of itself; for it is but a crotch of a money-parliament, which I avoid; and certainly as [to] the stomach of the time, it feeds rather upon matters of fancy and opinion than things solid, so as those things will diminish much and satisfy little; if anything[1] be petitioned in that kind from the Parliament, it may receive a weighed and gracious answer. But it is the embracing of worthy causes, and the advancing of worthy persons, and the protecting of his people in true religion, peace, and justice, that are the true retributions. As for the *medietate linguæ* of Sir Charles Cornwallis, I will not be so saucy as to speak of it, the rather because somewhat hath been happily and in good time done by his Majesty in that kind already.[2]

Fifthly, agreeable to the same grounds, I am against it, that after the manner that hath been used to prepare for a Parliament, the King should be more scrupulous or tender in suits or other projects than at another time; as if he should[3] keep a kind of diet against a Parliament. Let his Majesty according to his great and inbred wisdom and goodness proceed justly both in Parliament and out of Parliament, without note of difference.

[1] The words from "diminish" to "if anything" (inclusive) are inserted in the margin of the MS. in the transcriber's hand. I suspect that there is still something wrong. But the meaning is clear enough.

[2] Alluding probably to the rise of Villiers, who was not a Scot. Sir C. Cornwallis had advised the King to distribute his favours more equally between the two nations.

[3] *or if should* in MS.

For these things do but savour of weakness; and whatsoever shows either fear or need of a Parliament hurteth, and it is but a lecture of boldness. Only such things as are *ex diametro* opposite to a Parliament, as these pardons were, or any more new impositions, or embasings of money and the like, must be avoided.

Sixthly, for the matter of Impositions, which, though at the first it mought perhaps [have] been easily stopped, yet now cannot possibly be blanched or passed over, I do allow well the proposition of Sir Lionel Cranfield, being more indeed than I could have looked for from a man of his breeding; which is that the revenue by the late Impositions raised be turned, without diminution and perhaps with increase, into raising of rates, not upon the same things, but where it shall be best for the advantage of the kingdom and the disadvantage of the stranger; and that it may be so handled that it be not done directly as a laying down of the Impositions, but in respect of advancing the exportation above the importation. This proposition hath four great good consequences; the one is a demonstration that the decreasing of the wealth of the realm groweth not by any outlet into Scotland, but by the overtrade with the foreigner. The second, that it will remove this same rock of the question of the power of imposing, and turn it into a nature of revenue that cannot be questioned in point of law. The third, that it will silence all the voices of the out-ports, which made the rattle, and which in these are little or not at all interessed. And the fourth, that it will indeed and *de vero* mend the case of the realm in point of trade. As for the power of imposing, it cannot be weakened nor touched by this, both because it is done to another end, and also it will be retained well enough by the great Impositions of Cloth and Wines which shall remain, together with some few other of the new which are least subject to complaint. But whether this should be done before Parliament or in Parliament, not calling them to it for any matter of power but only for advice, I am yet doubtful.

Seventhly, there is another excellent preparative for the Parliament, agreeable to the former grounds, if his Majesty shall be pleased to hearken to it, which will create faith in all men that his Majesty will indeed subsist of himself; consisting of two points. The one is, if his Majesty will be pleased, somewhat according to the manner of the ancient empire of Rome, to sever his receipts

(as they had their *ærarium* and *fiscus* apart), and this not by creating of new treasurers or officers, but only by assignation and ordinance (but that to be inviolable), assigning some certain parts of the revenues for the discharge of such debts as touch the life-blood of the state,—as the Navy, the Cautionary Towns, Ireland, the entertainment of Ambassadors, etc.; some part as a Treasure of Store, like the revenue of St. Mark in Venice, or as the Romans called it, *sanctius ærarium* or *thesauros intactos*, for war and case of necessity; and the rest of the gross revenue to go for the King's ordinary charge and bounty as it shall hold out. This will give the King a great deal of reputation and trust with his people; it will secure the state in the main service thereof; it will stop the mouths of suitors; and put the superfluous charges by; and, that that is above all, I am persuaded it will free and exhilarate the King's own mind. The other is that which I must induce with a preface. I am of opinion that the King should not for profit diminish one iota of majesty, and I think it more needful for him so to do being in want than if his coffers were full; and if it be observed, the whole spirit of this discourse worketh in that faculty. So that if his Majesty's abode were chiefly at London or standing-houses near London, I had not what to say. But since it is far the greatest part of the year otherwise, I know no reason in the world but he may keep greater state and majesty when he comes to London or to other standing-houses near about than ever he did, or any of his predecessors did, and yet nevertheless save and abate a marvellous deal of charges which now is obscured away.

Eighthly, I must conclude these points of a preparation of a Parliament with a point without which all the rest will be unprofitable; which is, that his Majesty be pleased according to his great wisdom and absolute power to extinguish, or at least compose for a time, the divisions in his own house, which otherwise, as it did the last time, will be sure to have such influence and infusion into the House or perhaps the Houses of Parliament, as we shall only grow and profit in inconveniences. For as long as any popish dissembler, turbulent spirit, ambitious or vainglorious valuer of himself, peevish puritan, seditious bankrout, weak popular or patriot, shall make account that in opposing the King's causes he shall have a retreat or harborower[1] overt or se-

[1] So in MS., probably "harbour."

cret in the favour of some great person, let his Majesty look for nothing but tempest. Therefore it must be so handled that factions be so mortified, or at least laid asleep, that[1] all do counsel a Parliament and come cheerfully to it, and join sincerely in helping forwards the King's business, and be all alike sensible of any opposition or frustration thereof, and in a word that the people may as it were read in their faces consent and assurance. As for any undertaking, or opinion of undertaking, it is by all means to be laid aside, [though] it were to be wished that the gentlemen that were noted therefore were not altogether vilipended or discouraged or exasperated; and the like and equal course to be held towards those that were their opposites.

There resteth now to propound in the affirmative what are the fittest things to be made the subject and declared the cause of the calling of the Parliament, in lieu of want and money and supply, which have been lost by following, and will sooner meet the King than the King shall ever be able to overtake them by chasing them. And after this it resteth in the last place to set down what courses are to be held in the manner of calling and opening the Parliament, and there to leave it to God, and to emergent occasions.

The subject of this Parliament must have three properties. The first is that which I always begin with, that it be *de vero* good, *bonum in se;* and not speculatively or commonplace-like good, but *politicly* good; that is, apt and agreeable for the state of the King and kingdom. The second, that it be matter acceptable and comfortable abroad. And the third, that it be of that nature as, besides the matter itself, it doth incidently and aptly and necessarily give the occasion and awake the desire in the King's subjects to give unto him and to provide for him.

Ninthly, therefore, I do wish the subject of this Parliament to consist of two parts in general, 1. increase and advance of trade and commerce; 2. and preparation and politic constitutions for the defence and strength of the realm.

Than these two things nothing can be more proper for these times, nor of a more proper argument to knock at the subjects' hearts for the providing the King of treasure. The particulars of this I reserve to be deduced in a memorial by itself; because I will not break off the series of these articles of advice touching a Parliament.

[1] *and that* in MS.

Tenthly, I wish that the summons of the Parliament be accompanied with a proclamation, penned in majesty, without devices or flatteries of people, containing some touch of the general causes of calling the Parliament before remembered, and some monitions touching the choice of Parliament men; of which kind there went forth an excellent proclamation in the first year of his Majesty's reign, save that it was too peremptory in one point of refusing returns.

Eleventhly, I wish by all means that the House may be compounded, not of young men, but of the greatest gentlemen of quality of their country, and ancient Parliament men, and the principal and gravest lawyers, serjeants and readers, and the chiefest merchants, and likewise travellers and statesmen; and, in a word, that it be a sufficient house, worthy to consult within the great causes of the commonwealth.

Twelfthly and lastly, I wish the first day of the opening of the Parliament his Majesty would be pleased to speak in person, and to deliver, according to his excellent and incomparable ability, the causes of the assembling thereof; being in effect that he will not suffer his people any longer to leese the benefit of peace in trade, nor to be unprovided for the accidents of war; but forgetting his particular hath called it for their wealth and defence; making some princely and reserved description of the affairs of Christendom at this time; which is an argument worthy of the voice of so great and wise a King before his people. But for me to speak of this, it is right *sui Minervam;* and after that (as I have heard his Majesty himself protest he would not) so I think he is in the right if he speak no more; except it be upon some occasion of thanks or other weighty particular; keeping Horace his rule, *Nec Deus intersit, nisi dignus vindice nodus inciderit.* But then I wish also that the Lord Chancellor speak the same day, taking to him the part which may seem to have any harshness in it, which is touching the restriction and prohibition of the course of collecting and bundling of petitions or grievances, howsoever they be pleased to call them, and the monition concerning the licentious liberty of speaking and uncomely impatience of hearing, and likewise for the making so many general committees of the whole house, which hindereth all business.

Thus have I set down to your Majesty my poor advice touching the greatest cause, or as I may term it the cause of causes,

as things now stand; which by the simplicity thereof may deserve your pardon; humbly praying you to accept that heart that burneth perpetual as a vestal fire upon the altar of devotion and thankfulness towards you, whom God ever preserve.

2.

If this advice was volunteered by Bacon before the King had said or done anything in the matter, it required some courage to offer it: for another experiment like the last with like results could hardly fail to ruin the credit of the adviser in the King's eyes. But the case being the same as it was, only stronger, the remedy to be applied was the same, only more needed; and Bacon's advice the same, only bolder and fuller and more earnest, and carried more carefully into detail. If any one imagines that the course actually taken with the last Parliament was according to his advice, he may satisfy himself that it was not so, by observing that in recommending that a course "just contrary" should be taken with the next, he repeats in all its main features, and with no more variation than was required by the altered conditions of the time, the whole of his former counsel; recommending the same attitude of independence and indifference on the King's part with regard to supplies; the same abstinence from everything that should have the appearance of bargaining and setting out concessions for sale; the same kind of causes to be given out as the occasion of calling the Parliament; the same kind of preparations for meeting it; the same avoidance of all meddling and interference either with elections or deliberations; the same disposition of spirit and temper to meet possible disappointment with dignity and composure, and ensure a gracious and respectful parting in any event. The particular subjects which he wishes to be submitted to the consideration of Parliament are also in perfect keeping with his former advice and with the policy which he had always recommended. They were to be the increase of trade and the security and greatness of the kingdom. The separate memorial in which he proposes to give the details has not survived; but it is pretty clear that he would have made the first a means of disposing of the question of Impositions—the Government and the people dropping and forgetting the point on which they differed in order to pursue together an object in which they agreed; and that he would have used the last to get rid in like manner of the jealousies which had made the Lower House so close-handed of late years, by engaging them in an enterprise after their own heart, for which the late

occurrences abroad supplied a fresh opportunity. I have noticed more than once Bacon's idea that a bolder attitude in foreign affairs would be politic, if only as a diversion of domestic discontents. Now the death of so great a man as Henry IV., who, though a professed convert to the Church of Rome, continued to be in his political capacity the great ally and leader of Protestantism, was enough to unsettle the balance of power in Europe; and in the disturbances by which it was followed the zealous Protestantism of England would have been proud to see the country play a part. It is probable that a well-declared resolution at that time on the part of England to stand on jealous watch against any increase of the Spanish power would not only have kept that power within its banks, but converted English Puritanism and Anti-popery into zealous supporters of the Government. And now they saw France threatening to throw her weight into the wrong scale. Instead of acting as the great counterpoise to Spain and Austria, as she had done under Henry IV., she appeared to be uniting with them. News came that the young King was going to marry Anne of Austria, while his sister Elizabeth was going to marry the Infant of Spain: a conjunction very alarming to Protestantism, the importance of which, as well as the use that might be made of it, was well enough understood by James; as we know by the terms in which he directed his ambassador to remonstrate. A pamphlet printed in 1615, entitled "News out of France concerning the Marriages," etc., contains a translation of the speech addressed by the English ambassador to the King and Queen Mother in June of that year: from which the following sentences are extracted:—

"His Majesty hath been advertised that your M. is resolved speedily to take your journey and to make an exchange of Princes with Spain. . . . Now France diverting itself from him by the precipitation of these marriages with Spain shall leave unto him alone the burden and charge of all such affairs and differences as yet remain in Christendom undecided. However his M. is not ignorant of the advantage which elsewhere is offered unto him by this alienation, *if he were a Prince ambitious to win unto himself alone the goodwill and friendship of all those ancient allies which by this action seem abandoned*," etc.

Bacon, I fancy, would have had him yield to the ambition and improve the advantage. And though speculations upon what would have been the issue in times past of counsels that were not followed are even more doubtful than predictions of what will be the issue of the counsels of to-day (only that the error is safe from detection), it can hardly be questioned that if the opportunity had been judiciously

used, the issue would have been very different from what it was. So great a charge in the *direction* of popular feeling when it was as yet only beginning to feel its strength, could hardly have failed to alter the course of events both at home and abroad. I can even conceive that it might have saved Europe her thirty years' war and England her great Rebellion.

Had a Parliament been elected under a general impression that the business in hand was to arm in defence of the religious liberties of Europe, we are well warranted by the issue of similar experiments both before and after in concluding that the Lower House would have been liberal of subsidies. And if at the same time the particular points in dispute between the Commons and the Crown could have been quietly removed out of the way, and the King could have been persuaded to consent to some arrangement which would put it out of his power to indulge his taste in future for that thoughtless liberality in giving which was the origin of those illiberal anxieties about getting that lost him so much majesty in the eyes of his subjects,—and if he could have acted his part well enough (for the assumption of an air of confidence and indifference at such a time would have required good acting),—the experiment, though bold, would have been far from hopeless.

But there were two difficulties in the way,—one of which I think Bacon cannot have been fully aware of. If to prepare against danger to religion from the intermarriages between France and Spain was to be the business of the session, the rumour of a marriage to be arranged between our own Prince of Wales and the Infanta would be a very intractable item in the programme. How Bacon proposed to treat it, we have seen; and one would like to know whether when he submitted that suggestion to the King he was aware of the state of the negotiation. If he did not know that such a proposal was under consideration (which is possible, for it was conducted with careful secrecy), we could only infer that he would not himself have advised the King to entertain it seriously. But if he knew that it had taken the shape of a series of formal articles, proposed by the King of Spain and accepted by the King of England as a basis for negotiation (which was the state of things at the end of June, 1615),[1] we must suppose that he meant to interpose a very bold and emphatic warning against it. As an officer of the government who was not a councillor, he could hardly have represented to the King more distinctly the inconvenience of the policy which he was meditating than by recommending him to let the prospect of it to be held out

[1] See a paper by Mr. S. R. Gardiner in the 'Archæologia,' vol. lxi.

in terrorem to his Parliament, as a thing so hateful that they would be the readier to take away the motive to it—which was the financial embarrassment. That in his private opinion the Spanish match would be a very impolitic measure, is clear upon either supposition.

The other difficulty was the want of harmony in the King's own household, which threatened discord in action. There were factions at Court both political and personal. But I imagine that the divisions which Bacon referred to were chiefly political: as between the supporters of the French alliance on one side and the Spanish on the other; each interested in discrediting their rivals, and therefore in thwarting whatever measures they favoured. Unless provision could be made against this contingency, it would be better to let the thing alone; and James resolved, before committing himself further, to ascertain how his Councillors were disposed. Of the opinions of six of them, as delivered in the formal debate which took place at the Board, Mr. Gardiner has stated the substance. But the report which he found among the State Papers, being incomplete, leaves us uninformed as to the opinions of the rest, among whom (since they spoke in order, beginning with the lowest) were all the most ancient members,—all in fact who had been of the Council above a year and a half. "It would have been interesting," he says, "to know how the question under discussion was received by those who sate at the upper end of the table."[1] And I am fortunately able to supply the information. Among the Harleian Manuscripts in the British Museum (in a collection of papers of which the catalogue gives no indication) is a very good and quite complete report of the whole proceeding; which, as containing conclusive evidence of the position taken by the King and his advisers at this time upon the questions raised in Bacon's memorial, seems to me important enough to be worth printing without abridgment; abstracts being always unsatisfactory things where the reader has not the means of referring to the original.

CONSULTATION AND PREPARATION FOR A PARLIAMENT AT WHITEHALL THE 24 OF SEPTEMBER 1615, BY THE LORDS OF THE COUNCIL.[2] [GIVEN ME BY SR SAMUELL SANDS.[3]]

On Sunday the 24th of September his Matᵛ after his return from the progress, having his Council with him at Greenwich, made a short declaration to them by way of repetition of what he had often said to them before, concerning the establishing of his estate, as well by payment of his debts as by reducing his expenses to an equality with his revenews; and fell upon

[1] Gardiner, vol. ii. p. 253. [2] Harl. MSS. 4289, 224 *b*. [3] An interlineation.

some particulars in that point of abating his expenses, as namely of Ireland. And thereupon was moved by my Lo. of Canterbury that he would give in charge to his Council that they should take every several head by itself (which had been before spoken of) and not to depart from that head or title, till they had concluded in it: as if they began with Ireland, to pursue Ireland; if with the Navy, to pursue the Navy, and so etc. This being well liked by his M. and all his Council, it was yet proposed by some of them that this course of abatement, though it would be a great ease in one point, to keep the canker of his estate from fretting further, yet would not suffice to redeem him out of his necessities, for it would help nothing towards the payment of his debts; and so it was insinuated unto him that there was no likelihood of a perfect subsistence but by relief of his people, which must be by Parliament. Upon which motion, after some altercation about the difficulties of having a Parliament, it pleased his Ma. to come to this direction, that his Council in their next consultations, should consider, first whether there were any means to provide for his M.'s subsistence without a Parliament. Secondly, if not without a Parliament, what preparation their Lps. should think fit to be made before a Parliament, which might give good hope of success: for that as on the one side he would not avoid a Parliament if he might see likelihood of comfort by it, knowing it to be anciently the way of his progenitors: so on the other side he would rather suffer any extremity than have another meeting with his people and take an affront. Upon this direction their Lps. met at Whitehall the 25th of September (being Monday) in the afternoon, and were soon agreed with general consent that for the payment of his M. debts there was no way that they could think on, honourable and ordinary, but by contribution in Parliament. So that the second point rested only in consideration what preparation was to be made for a Parliament; and did agree that the next morning, being Tuesday, the Council should meet and deliver every man singly by himself in order his opinion upon that matter of preparation. And the meeting held in the morning, but when it came to speaking, some seemed to have misconceived the former day's resolution, and to press the particular heads of abatements, and to proceed thereon; which others contradicted. And after some dispute the former resolution was confirmed by general consent, that there was no way of solid relief for his M. but by Parliament: and therefore the point of preparation necessary to be speedily debated. To which because some of the company alleged they were not provided to speak so suddenly, time was taken till Thursday morning following, the 28th of September, and so to be debated that morning; that his M. might have their Lps. resolutions that afternoon before his going to Greenwich to the Queen, where he was to keep Michaelmas day, and on Saturday to be gone towards Royston. According to which conclusions their Lps. met at Whitehall on Thursday morning; where the order being before taken that every one should deliver his opinion in rank, as they sate, beginning at the lowest end, according to the ancient manner of consultation, Sir Thomas Lake, being first to speak, delivered his opinion to this effect following.

Sr Thos. Lake. 1.

My Lords, I take it for concluded by general consent of you all at two meetings in this place, that there is no means honourable ordinary and certain, to provide for his M.'s subsistence but by way of Parliament: comprehending in the title of subsistence the payment of his debts as well as the ordering of his expenses. All states subsist by two principal ways; by means and by reputation: and reputation is as essential and of as great moment to a Prince's well doing as is his means. And in reputation nothing more honourable or available than is the opinion of the love of his people, and of a perfect unity between their Sovereign and them. That there have been breaches and unkindnesses betwixt the K. and his people, your Lps. know by what hath happened in Parliament. That these differences have detracted from his M's. reputation both at home and abroad you do not doubt. And that they were meet to be taken away, and his M. and his people better atoned, your Lps. can but hold it most necessary. And well that will not be done, or not so well, as by meeting in Parliament. So that for my own opinion, if there were any other ways probable to relieve his M. without a Parliament, if by this deliberation of your Lps. now in hand it shall appear to be likely that the same may be done by Parliament, I shall prefer the way by Parliament before any other, because it worketh to both the points of subsistence; that is reputation as well as means, in settling of love and good will between the King and his people. Limiting still my opinion with this caution; if upon consultation it shall be probable to your Lps. that such a preparation may be made as in your judgments may give his Ma. hope to reap such fruit and comfort of a Parliament as heretofore his progenitors have done. So that the preparation to a Parliament is the proper subject of this day's consultation, and that whereupon we are to speak, and to which I address myself.

Preparation in general is first to take away such impediments and obstacles as have been noted to have been the hindrance of the people's kindness to the King, and then to do either before or in Parliament such things as may be grateful and pleasing to them.

The obstacles and impediments have been of two kinds: one, an opinion and conceit taken by the people (which they have gathered out of misconstruction of his M.'s bountiful and magnificent nature) of so great a facility in him to give (which they miscall prodigality and lavishness) as that whatsoever they should give him would be misspent in private gifts, and not converted to the good of his estate. The other kind is in acts that have proceeded from his M. which have been offensively taken; some to be against law, and some against the liberties and privileges of his people. To both these obstacles remedies must be provided: to those of the first kind, by such a course of proceeding of his Ma. and your Lps. as may work unto the people's minds a contrary opinion to that wherein they are: that is, that his M. now so well sees his error, as well in the excess of his gifts as of his ordinary expenses as that he is resolved to be a good husband in both hereafter. And to that end the course is to be pursued which your Lps. have already been about and are now in hand with; that is, to move his M. to stay his hand from all manner of gifts, till his own estate be re-

dressed. And next, to proceed in the matter of abatements (which is begun) in the several titles which have been proposed: viz Ireland, the Navy, the Household, the Wardrobe; and such other as may be thought upon. In which the aim must not be only (as my Lo. Cook hath well said) to make the expense equal to the revenew (for that will produce but a bare means to live from day to day) but to make the expense so far fall within the revenew as there may be to spare at the year's end; and to lay up for a stock and store of money; without which no prince nor state hath assured establishment.

The other points of obstacles, I said to be such as have been done offensively; which do best appear by such grievances and petitions as have been delivered in former Parliaments; in which that your Lps. may have a better light how to give satisfaction, either by removing them if there be cause, or by providing to give answers justifiable; I am of the opinion of my Lo. Cook that your Lps. shall do well to call for them as they have been exhibited, and to deliver them to the King's learned counsel to be perused and reported to your Lps. And such of them as may be redressed by ordinary course of law to be recommended to the Judges to be relieved that way. And such as require an especial act of his M.'s to be moved to him to be redressed in such manner as your Lps. shall think meet. In this title of grievances I think your Lps. do not doubt but that the smart which hath most grieved the people and been most insisted upon is the matter of Impositions; and therefore it is most seriously to be thought upon by your Lps. as a thing of tender handling between the honour of a King and the satisfaction of his Commons. I will not now dispute whether that the taking of them away will give a satisfaction, or whether the point of right will be urged; because that question is not proper to this day; but will reserve to deliver my opinion till that point be brought to question. That which I now move to your Lps. is, that because his M. hath of late showed a gracious disposition to the taking of them away, or the most of them, that your Lps. will think it a thing necessary to be done, and enter into a consideration how and in what manner, with best respect to his M.'s honour, the same may be proceeded in; for which purpose because there hath been a project delivered to his M. by Sir Lyonel Cranfield, and once moved unto your Lps. at this board; who being a gentleman of good capacity and well understood in matters of merchandise, I could wish he were called to your Lps. and his project opened more at large and then taken into your consideration: and if to your wisdoms it seem to have a good appearance, then by you to be perfited; or else some other to be thought upon which may like you better. And thus much for preparation of this kind.

The second kind of preparation which I spake of as needful to be made doth consist of things grateful and pleasing to be done either before Parliament or in Parliament: of which I have conceived some which I will open to your Lps. And to them I make no doubt but your great wisdoms and experiences will add many more of greater worth and moment.

The first is the great matter of fishings upon the coasts of these king-

doms: a matter often spoken of by your Lps, already entered into before the progress began, and a time appointed by your Lps to be had in the next term for a further proceeding in it. It is a subject of a great extent, an universal benefit of the whole kingdom, especially to the port towns and maritime counties. And whether your Lps perfect it before Parliament, it will be a very pleasing preparation; or whether you reserve it to Parliament, it will be greedily embraced there.

Another is the matter of importation and exportation which hath been already treated of by your Lps, and a course taken by you to satisfy yourselves whether the trades of the realm be overbalanced or no. And to that end Sir Lyonel Cranfield and Mr. Worsenam have once been deputed, and will be ready to attend your Lps with the report. This is as universal and commodious as anything that can be thought upon for the good of the kingdom, and whether your Lps will proceed in it before Parliament or reserve it for Parliament, is a subject very grateful to work upon.

A third is the statute of employments; worthy of your Lps care to be thought upon, because it enricheth the natural subject and curbeth the stranger.

A fourth is the dyeing and dressing of clothes, which therefore I name as a matter fit to be handled in Parliament, because if it be found beneficial in the course which is begun, it may there be confirmed and established; if incommodious, there may it be altered and ordered, as shall be thought fit.

A fifth is abolishing of obsolete laws and contrary one to another; a matter which hath sometimes been thought upon by his M. and often spoken on in Parliament, and would no doubt be a good relief to the subject. So that all the means of preparation of both kinds, which I can think upon and have out of my poor judgment thought fit to present to your Lps are reduced to these heads.

1. Stay of gifts.
2. Reducing of expenses and revenew to an equal, in their several titles: Ireland, the Navy, the Household, the Wardrobe.
3. Removing of grievances in general.
4. Impositions in special.
5. The fishings.
6. Importation and exportation.
7. Imployments.
8. Dying and dressing of clothes.
9. Reforming of laws obsolete.

These preparations of the one kind and of the other being duly made, and so proceeded in, as by your Lps wisdom they shall be disgested; and such others added as in your Lps judgments will be thought upon; I shall for my part have great hope that the natural kindness of the people of England to their princes shall revive again, and shew itself in a liberal and free contribution towards the relief of his M.'s necessities. This is my opinion, which I leave to the censure of your Lps greater wisdoms.

After Sir Tho. Lake spake next the Master of the Rolls, whose speech was not long, but tended to the necessity of relieving the King, and that his debts could not by any ordinary means be relieved but by Parliament: for a preparation wherunto he thought that the best way was the removing of such grievances as had been presented in former Parliaments; the particulars whereof might appear by the Parliament Rolls, to which he referred himself. And for the rest seemed to concur with that which Sir Thos. Lake had said. S^r Julius Cæsar. 2.

Next unto him the Chancellor of the Duchy very briefly spake in effect, that the King's necessities could not be holpen but by Parliament; and that for preparation and order of proceeding thereto he can add nothing to that which had been said by those that spake before him. S^r Thomas Parry. 3.

Then followed my Lo. Chief Justice, who spake at great length, beginning with this: That for a foundation of his speech he would, being a lawyer, follow the custom of lawyers; that is to put the case whereunto he was to speak. The case he found to be thus: that his M. was indebted 7000000*l.*[1] and his expense more than his revenew by 7 or 8 score thousand pound a year, two grievous wounds for any state; the curing whereof was the scope of this present consultation. To the one, which is the excess of the expense above the revenew, he said there were two ways: one by abatement of the charge, the other by adding to the revenew. For the point of abatement, he wished the course to be pursued which had been begun: that is, that their Lps should seriously proceed in the several titles which had been proposed: viz: Ireland, the Navy, the Household, the Wardrobe, and if any other should be thought upon. He renewed also a former motion of his own; that the payment of all pensions should be staid till the King were out of debt: a course (he said) often practised by his M.'s progenitors in such like cases, and warranted by sundry Acts of Parliament. In the point of addition, he spake only of putting in execution the statute of employments; and that a due consideration might be had of the exportation and importation, whereby his M.'s revenew will be increased in his customs. Some other help he thought his M. might have by calling in question grants wherein he had been defrauded, which he thought was both warranted by law and would be of good example. S^r Edward Cooke. 4.

Touching the payment of his M.'s debts, he insisted much that it was very necessary a remedy should be provided for it; dividing the debts into 3 natures: one of eating debts, such as were taken up at interest; the 2^d crying debts, due to soldiers, mariners, tradesmen, and such as live on labour; the 3^d pressing debts; but named them not, nor explained not his meaning therein. He concluded that for the discharge of so huge a debt as 7000000*l.*[2] was, he knew no other way but by contribution of his M.'s subjects in Parliament; a due preparation being made for it; for without that, he agreed with others that it was not to be attempted.

And concerning the preparation, he said he approved those heads that

[1] So in MS.

[2] So in MS.

had been touched before by others, and partly by himself: as namely, stay of gifts; abating of expenses; removing of grievances in general; in special, some course to be taken in matters of impositions and grants offensive. And then added of his own, which had not been touched by any other, that he wished a collection might be made of his M.'s expenses in the first years of his reign, and of the reasons of them; thereby to shew that they were necessary and fit for his honour. Which being represented in Parliament he thought would work to good purpose; in making it appear that all his M. great expenses proceeded not only out of facility and prodigality; but that the multitude of foreign Embassadors and Princes resorting to him had forced him to an extraordinary expense, which with the honour and dignity of this kingdom could not be avoided. He wished also that in Parliament, if his M. thought good to have it, there might not be too much demanded, or pressed upon the people, lest the greatness of the demand might discourage them from giving at all. He wished also that none of their Lps or other of the Council or any other great men of the land should meddle with the election of knights or burgesses; but leave the people to their own choice; for he had observed in the last Parliament that such interposing of great men and recommendations in those elections had been very offensive; and withal that many had crept in by those means, who had shewed themselves most adverse from the King. Further he wished that none of the King's learned counsel should be of the lower house, for two respects: one, that their presence there was not well taken; the other, that there was great use of them above in the higher house. Last of all, he advised that for a due consideration to be had of the several heads and titles which had been spoken of either this day or at other times at this board, their Lps should distribute themselves into several companies, or Committies, of 5 or 6 in a company, and not above, and each company to have some several heads recommended to them, and special days appointed for their meetings; to have power also to call to them all such ministers and officers of estate or private persons as they should think meet, and able to give any light to them of that which they had in hand. This he thought a better way both for expedition and mature deliberation than to have everything handled at first by the whole Council-table: the Committies being limited when they had gone through with that which was committed to them, to make report of their doings and opinions to the whole Council-table; and there the matter to receive determination.

This was the sum of his speech.

S^r Foulke Grivill 5.

After whom spake M^r Chancellor of the Exchequer, who was not long. He began with an excuse of delivering his opinion in matters of so great moment; for that he had not been long acquainted with that table. He said he would rather move some questions than deliver his advice; one question was whether their Lps would hold it fit that everything that was vulgarly complained of were of necessity to be amended. All impositions were not unlawful; nor all monopolies: in all ages and in all states some

of both kinds have been done and held warrantable. Another question was whether their Lps would not think that many of those things which were moved for preparation were meet to be referred to Parliament and handled there. It was a pleasing thing and popular to ask a multitude's advice; besides, it argued trust, and trust begat trust; and such a mutual confidence might perhaps dispose their minds to a greater freedom towards the King. For other matters, as well of debts as of expenses, he would not dissent from what had been spoken before, especially by the Lord Chief Justice.

Sr Rafe Winwood. 6.

Next in room was Mr. Secretary, who put for a foundation that there was no way to redeem the King out of his necessities really and substantially, but by the good will of his people in Parliament, and all other ways and means would prove frivolous, and time lost that should be spent in consideration of them. He approved that which others had spoken before him, and namely the Lo. Chief Justice, concerning the point of preparation; but reduced all to three heads; which he said were of most importance to be insisted on. The first was the point of Impositions, which had made greatest interruptions in the two last Parliaments, and was like to be most pressed: and therefore wished it to be most maturely considered in a special Committy, how that obstacle might be cleared and satisfaction given in it. His second point was composed of two of the Lo. Chief Justice's motions: first that a collection might be made of all his M.'s expenses, with reasons to justify the necessity of them: the second was that the frauds committed upon the Crown by those which had been trusted in great offices might be called in question: a matter which would be very grateful and popular, and bring in benefit to the King. His third point proceeded merely from himself; that no greater inducement in Parliament to give could be, than if they might receive assurance that what they would give might be converted to public uses, and not otherwise employed; and wished their Lps. to take some consideration how satisfaction might be given in that point, when time should require.

The Controwler 7.

My Lord Wotton spake next after, and said he could not be long in his speech, because much of that he would have said was delivered already by others; namely by Sir Tho. Lake. He agreed with those that had voted before him, that his M.'s relief must come by Parliament: that before a Parliament must go a good and well-disgested preparation; better means of which he could not think upon than those which Sir Tho. Lake had already mentioned, and some of my Lord Chief Justice's: as namely, the removing of grievances; clearing the matter of Impositions; calling in of grants offensive; reducing of expenses, etc. Only one thing he moved of his own, not delivering it as an advice or proposition to be presented to the King (except their Lps. did all concur with him), but only as a motion, that a Parliament might be called in Scotland before the Parliament in England, and something granted by them towards the payment of the King's debts, which he thought would be a good inducement here and a leading example, especially seeing Ireland had so lately done the like.

The Treasurer of the Household. 8.

Next in order my Lo. Knowls delivered his opinion; which in effect was to approve that which had been said before, namely by the Lo. Chief Justice, for naming several Committies for the consideration of the several heads now to be resolved on: and added for an increase of his M.'s revenew and a powerful preparation for a Parliament, that his M. might be moved by the Lords jointly that he would be pleased to be inclined to the disparking of some parks and disaforesting of some forests and chases lying so far off as that he took no pleasure in them. This, although likely to be distasteful to his M. at first, yet being of great use to further the ends their Lps. aimed at, and very grateful, as he conceived, to the people; he said his M. by your Lps. authority might be induced to lend his ear thereto.

The Lord Warden of the Cinq Ports. 9.

The Lord Souche in order after him did not enlarge his speech to many particulars, but only gave his assent to the ways of preparation which had been propounded before: namely by Sir Tho. Lake and the Lo. Chief Justice: to which he added only, that if there were some good course thought upon for the due execution of the laws against recusants, it would be in his opinion a very grateful and popular thing. And that great men should not meddle in election of knights and burgesses. He would add this also, that when his M. should resolve to have a Parliament, care might be had to carry it so that the people might not conceive that his M. was moved to it at the instigation and solicitation of any private persons; but that it proceeded merely from himself and for public respects. He concurred also with the Lo. Knowls in the motion for disparking of parks and forests, and so ended.

Doctor Andrews. 10.

The Bishop of Winchester began his speech with an excuse for not delivering his opinion in a matter of so great moment: for that he was new come to the table, and never heard any of those points whereof it seemed by those that went before him their Lps. had often had conference. For the matter of Parliament in general, he said that he knew of his own knowledge that the meddling in elections had done hurt, and likewise the conceit that the last Parliament was called at the instance and solicitation of private persons. And therefore agreed with the opinion of those that wished that against the next those courses and conceits might be prevented. He added of his own, out of his own profession of divinity, that he thought it a very good preparation that the people might be instructed and taught that relief to their Sovereign in necessity was due *jure divino*, and no less due than their allegiance and service.

Viscount Fenton. 11.

My Lo. Fenton being next was short in speech, excusing his not giving of opinion; the matter being weighty and he but a stranger in this commonwealth, wherein he never had delighted to be curious. But for so far as his judgment did conceive by that which he had heard from other of their Lps., he assented in those things my Lo. Chief Justice had proposed. Only concerning the motion of a Parliament to be held in Scotland, he said it had been already performed; for that within these two years there

had been one assembled there, which had given towards the payment of the King's debts.

The Earl of Exeter spake next at good length, shewing the necessity of a Parliament, and insisted upon a speech of the Lo. Cook's that there was law in force to require a Parliament to be holden every year for redress of the people's grievances. He said that Parliaments were called for two ends: the one for ease of the people's grief, the other for relief of the King. And that the first was a preparation to the other. So as he wished that all due preparation might be made before any were called. And that for preparation many good things had been moved by those that had spoken before him; as well in the point of grievances and removing of obstacles as in doing of things grateful and pleasing. In the removing of obstacles he insisted much upon calling in grants offensive, especially those of surrounded grounds, which he knew to be very grievous. In the point of doing things pleasing he pressed the abating of expenses; saying, relief by subsidies in Parliament if it were obtained, was but a relief temporary; whereas abatement of expense was an easement both certain and perpetual. He added further that among other things to be done for contentment, he thought none more necessary than to redress the excess of apparel, now grown so superfluous as was both a surcharge to the realm in general, and in particular to most gentlemen and householders of England a canker in their estates. The Earl of Exeter. 12.

After him the Earl of Pembroke spake pertinently, but succinct; shewing there was no real way to relieve the King but by contribution of his people in Parliament which as he held for fundamental on the one part, so did he hold it for no less fundamental on the other side that a Parliament was not to be attempted without due preparation. Howsoever some difficulties might be objected, yet he did not despair but that such preparation might be as should give hope of good success; he allowed the two ways of preparation which had been before moved; that is, removing of matters offensive, and establishing of things pleasing. In the former he touched specially the matter of Impositions, which he wished to be maturely considered of by their Lps., not doubting but if that might be accommodated, the rest would be easy enough. To the other point of things grateful and pleasing, he allowed of the propositions moved by others before; specially the reducing of expenses to an equality with the revenew; which conceit of husbandry would be a great encouragement to the people to give. Last of all he approved the Lo. Chief Justice's motion for several Committies to be assigned for the several heads of this consultation. The Earl of Pembroke. 13.

The Lord Admiral in his speech said only, that he could not be of other opinion than they were who had gone before him: that is, that the best way to relieve the King was by Parliament, being prepared by such cautions as had been moved: yet thought it not unfit to let their Lps. know a doubt he had conceived; that the preparations which had been moved would The Earl of Nottingham. 14.

not suffice; for that there had been offered to the house in some former sittings so great and large promises of retribution from the King, as perhaps they would expect the like to be made again, and not be willing to give but on such conditions. This scruple recommending to their Lps' considerations he gave his consent to the other particulars which had been moved; and namely to the distribution of the several branches of consultation to several Committies.

The Duke of Lennox. 15. The Duke's speech tended to this, that he would not take upon him to interpose his own judgment in things of so great moment as these which were now in consultation; but rather rely upon the opinion of others more experienced in the affairs of this country than he. He approved the ways of preparation which were proposed before. He concurred specially with those who had moved the disparking of some forests and chases. Only to the motion of a Parliament in Scotland, he answered the same had been already done, and money given towards the payment of the King's debts.

The Earl of Suffolk. 16. The Lord Treasurer next in order said summarily, that he would not dissent from so many great Councillors and men of understanding as before him had delivered their opinions. That the solid way to relieve the King was by contribution of his people in Parliament. He did approve the ways of preparation which others had presented before, and thought they could not be more or better readily conceived, specially than that of the Impositions, so as the same were handled with a due respect to his M.'s honour. Only he added that he could not but move a doubt, that stuck deeply with him: which was that the taking away of Impositions *de facto* would not satisfy the Parliament, but that the point of right would be insisted on; which if it were once moved, was of so great a difficulty and so nearly touched his M.'s honour, as he knew not how it could be salved; and therefore wished their Lps. to have a special consideration of that point; either how it mought not be moved, or, if it were, how to be satisfied. He approved the motion of the Lo. Chief Justice for special Committies, and so ended.

The Lord Chancellor Egerton.[1] 17. The Lord Chancellor next spake at good length, and said that he had heard nothing moved this day, which had not often before been spoken of at that board; and namely in July last, before the Progress; which he verified out of a paper of notes taken by him then and at other times. In the matter of Impositions, which he perceived was the hardest knot to untie, he would not speak of his M. right of imposing, nor ever give consent it should be spoken of in Parliament or elsewhere; as he had never liked the moving of the question: it should suffice him to talk of the conveniency or inconveniency of the rates and quantity; and of the time when fit and unfit; and within those bounds he wished others to be contained, and would contain himself when he delivered his opinion, as occasion

[1] So in MS.

should be ministered. He never liked of novelties, especially in Parliament, as were the new terms of Contribution and Retribution, which he thought had done much hurt. He wished the old course of Parliament to be holden between the King and his subjects; that is, that his M. should grant them good laws, and they give him convenient relief, as his occasions should require. That for the matter now in question of preparation, he wished many things now spoken of had been already executed: for they had been so long since and so often spoken of, as ere this time some effect might have been seen, if they had been followed. Out of his notes in his paper, he confirmed his saying, particularly reciting the several branches which had been this day moved and some which had not been touched. First the reducing of expenses to equality by way of abatement, and staying of gifts; which his Lp. said had been termed to stop the running of the cistern. 2dly The stay of pensions and annuities, or some part of them, until his M.'s debts be paid. 3. Examining of fees unnecessary and which mought be avoided. 4. The matter of importation and exportation. 5. That of Impositions, what might stand and what be removed, and when and how. 6. The statutes concerning trade to be put in execution, and of employments. 7. The matter of monies in the inequality of the standard between us and our neighbours, supposed to be a great cause of the transporting of our gold and silver into foreign parts. 8. The disparking of forests and chases. 9. The improving of his M.'s wastes. 10. The selling of remainders, where many issues be extant. 11. Surrounded grounds. 12. Titles not lying in parishes certain. 13. Grants whereby his M. had been defrauded, and which were voidable in law. 14. Divers statutes which lay dead, especially concerning strangers, to be revived and executed, being such as would bring benefit to his M. and his people. These several heads, his Lp. said, had been formerly moved but foreslowed. He wished they might now be quickened and pursued, as things whereof some were good means to bring the King relief by themselves; some others good preparations for a Parliament; and some others fit to be treated in a Parliament. He urged expedition to be used, and for expedition that the Lo. Cook's motion might be followed concerning the distribution of several heads to several committies.

Doctor Abbot. 18.

My Lord of Canterbury being in course last, said that he had taken as great pleasure in this day's work as in any that ever he had been at in that place. He doubted not but that the issue of it would prove to the great glory of God, and great comfort of his M. for although the things then moved had been before questioned at this board, yet were they never handled so seriously and methodically, nor to such an end as was now aimed at. Concerning his M.'s relief he said that he agreed with those that held that the same could no way so honorably be done as by the good will of his M.'s people in Parliament, understanding a Parliament so prepared and ordered, as might carry with it a likelihood and probability of bringing good success. For preparation he approved the method delivered by Sir Thomas Lake; which consisted in removing of obstacles and performing of

things grateful and pleasing. In the particular branches of both he assented to the propositions had been made by others, which he repeated severally out of notes which he had taken. Of his own he added nothing: only gave his advice for secrecy to be used in the handling of these several things, saying that secrecy was the grace of all councils and the way to bring them safely to their ends. He did the rather urge this matter of secrecy upon an accident which happened at the first consultation before his M. at Greenwich, where a gentleman under colour of shutting the door, after the Council was gone in to the King, sheltered himself behind the door, listened a great part of the consultation, till he was spied by the Prince, whose eye he perceiving to be bent towards him, he retired. Last of all he gave his approbation to the disposing of particular breaches to several Committies, as the readiest way for better expedition and mature consideration.

Thus ended their Lps. speeches. Then collection being made of the several heads thought meet to be handled by way of preparation for a Parliament, and jointly withal for his M.'s relief, they were found to be these in number following: viz:

1. Stay of gifts.
2. Reducing of expenses by abatement (in Ireland; the Navy; the Household; the Wardrobe) to the proportion of the revenew.
3. Remove of grievances in general.
4. Impositions in special.
5. Fishings.
6. Importation and exportation.
7. The matter of employments.
8. The abolishing of laws obsolete.
9. A justification of his M.'s expenses.
10. Not to meddle with the election of knights and burgesses.
11. A Parliament in Scotland to precede.
12. Parks, forests, and chases.
13. Execution of laws against Recusants.
14. Matter of monies.
15. Secrecy.
16. Execution of statutes against strangers.
17. Assurance that money given should be converted to public uses.

This consultation being ended before dinner, their Lps. attending the King before his going to Greenwich, it pleased him to ask of them what had been done that morning: whereupon my Lord's Grace of Canterbury (now also offering to do it) who had taken large notes of what had passed, did make a summary report of the method of the proceeding, and then in order repeated particularly all the heads above mentioned. To all which his M. gave consent for particular consideration to be had of them; save that he was adverse to the disparking of parks, forests or chases. In staying of the pensions he said many difficulties would fall. And affirmed Scotland had kept Parliament already. The other 14 heads his M. left to their

Lps. to consider on, liking the order of ripening the particulars in several Committies, wishing expedition in the proceedings, and so departed.

On Michaelmas day after dinner the Lords met, and distributed themselves into several Committies: to each Committy several causes and times of meeting were allotted, as after follow.

There cannot, I think, be any reasonable doubt that all this was in earnest, and that we have here a true picture of the position in which the King and his Councillors of State stood towards the Legislature. None of them thought that the government could be carried on satisfactorily without the help of Parliament. All of them felt that to call in the help of Parliament without first removing the causes of quarrel and misunderstanding would be worse than useless. But they all hoped (more or less confidently) that with proper preparations a reconciliation might be effected, and all agreed in a general way as to the kind of preparations to be made. The King approved the course they recommended, and directed them to set about it at once. And the next day they arranged the several committees, so that each several head of inquiry might be entered upon in earnest at the beginning of the next week.

What would have come of it, must be left to conjecture.[1] The business was interrupted by a great accident which threw other work upon the hands of the Government, and made the time altogether unfit for the trial of such an experiment: as we shall see in the next chapter.

[1] A letter from the Council to the King, dated 27 November (S. P. Dom. vol. lxxxiii. no. 68), reporting the result of several deliberations on the question of calling a Parliament, and recommending him to order a meeting of the *whole* Council to discuss it, cannot (I think) belong to the year 1615. The month-date is very clearly written, but the year-date may be read either 1615 or 1613. 27 November 1613 is a very likely date for such a letter. See Vol. IV. p. 368. But it is difficult to suppose that it was written within two months of what passed on the 28th of September, 1615.

CHAPTER VII.

A.D. 1615. ÆTAT. 55.

1.

Two years before the time at which we have now arrived, Sir Thomas Overbury, Somerset's great friend and adviser, died in the Tower, to which he had been committed for contempt. In the summer of 1615 a report reached Winwood that there was reason for suspecting that he died by violence. This report he mentioned casually to the Earl of Shrewsbury as a blot upon the reputation of Sir Gervase Hellwysse, who was Lieutenant of the Tower at the time. Hellwysse, hearing of it from the Earl, volunteered a statement to Winwood; in which he admitted that there had indeed been a *design* to poison Overbury by the hands of Richard Weston, the under-keeper; but asserted that he had himself detected, dissuaded, and taken measures to prevent, though he had not revealed it. This Winwood reported to the King, who immediately gave orders that Hellwysse should be required to set down his declaration in writing. In the declaration which he drew up in obedience to this command Hellwysse admitted not only that he had himself discovered the intention of Weston to poison Overbury, but that he had since heard from Weston that Overbury was really murdered, and that it was done with a clyster administered afterwards by an apothecary's boy, who had been bribed. The only actor in the business that he knew of, besides Weston, was (he said) one Mrs. Turner; who, as soon as she heard that the case was likely to be inquired into, had sent Weston to sound him and find out how much he knew, and what part he was likely to take. But he admitted that, though he had "set down the truth," it was "peradventure not the whole truth," and as it seems that in his first communication to Winwood he had excused his own silence as proceeding from his fear of "impeaching or accusing great persons," the words were understood as an intimation that the Somersets were in some way implicated.[1]

[1] S. P. Dom. James I., vol. lxxxi. no. 86.

This declaration was dated the 10th of September. On reading it, the King, who does not appear to have heard of the rumour before, referred the matter to "some Councillors," with directions to inquire in the first place whether there was any ground for such an imputation upon the Somersets; and if they found it to be a groundless calumny, then who was the author of it.[1] The case proved on inquiry to be so grave that it was thought expedient to put it into the hands of Coke, as the man most practised in such investigations and the highest officer of justice; who appears to have entered on the work on the 27th,—the day before the meeting of the Council upon the Parliament question. Examinations were taken by him daily during the next week; and though the matter was still dark, the evidence began to tell so strongly against the Somersets that he thought it prudent to strengthen himself with the help of persons of higher rank than his own. For this purpose he went himself to Royston to speak with the King: who upon his representation of the state of the case, joined in commission with him the Lord Chancellor, the Duke of Lenox, and Lord Zouch. The date of their commission is not positively known; but I have little doubt that Mr. Gardiner is right in inferring that it was delivered to Coke in person at Royston on the evening of Friday the 13th of October.[2] The first meeting of the Commissioners was on the 15th. On the 16th Somerset (who had in the meantime been to Royston and back)[3] finding that he could not prevent the inquiry from going on, took a step which tended to increase the suspicion against him. Being still at large, and still holding the seals of his office, he sent a pursuivant, accompanied by a constable and a locksmith, to the house of Weston's son, with a warrant "to search for bonds and writings concerning Mrs. Hynde;" under pretence of which, "divers writings concerning Mrs. Turner" were seized and carried away. The Commissioners, seeing that Mrs. Turner was at the time the King's prisoner on a charge which was under investigation by the King's Commission, considered this so great a contempt that they at once ordered both Somerset and the Countess to keep their several chambers, and see nobody except their own necessary servants. And when they found that, in spite of this, the very next morning Somerset had endeavoured to get a message conveyed to Mrs. Turner, they committed him to close custody under the charge of Sir Oliver St. John.[4] All which having reported to the King on the 18th,

[1] Directions read in Court at the arraignment of the Countess, and the original shewn to the Peers. See State Trials.

[2] 'Archæologia,' vol. xli.

[3] Gondomar's letter printed by Mr. Gardiner in the 'Archæologia,' vol. xli.

[4] The Judges of the King's Bench to the King, 18 Oct. S. P. Dom. James I.

they received a message from him the next day signifying approval of their proceedings, and encouraging them to prosecute the business.

So far the inquiry had been conducted with zeal, diligence, and discretion by all parties. The King had entrusted it to Commissioners unexceptionable in character and position, and given them full liberty of action. The Commissioners in dealing with it had followed the order prescribed by law, which required that the principal should be convicted before the accessary were tried, and regarded as principal not the man who contrives and procures, but the man who executes the deed. And though the evidence implicated the Somersets only as accessaries, there can be no doubt that it fully justified the Commissioners in placing them under restraint in the meantime, that they might be forthcoming, if the principals were found guilty, to answer for their own part in the transaction.

But the next proceeding, in which Coke acted on his own judgment without consulting the other members of the Commission, was not so judicious. The case against Weston, who was accused of actually administering the poison, was now supposed to be complete; and on the 19th of October he was brought up for trial. In order that the trial might proceed according to law, it was necessary that he should "put himself upon his country." This he refused to do. In that case (strange to say) the law had then only one weapon by which it could enforce its own authority. It could order him to be put under physical pressure till he either consented or died. The nature of which alternative—the *peine forte et dure*—having been carefully explained to him, the trial was adjourned for four days in hope that he would think better of it. So far well. But there was a large audience that day in Court, including "some of the nobility and many gentlemen of great quality," who had gathered to hear the news, and would be much disappointed if they were sent empty away. For their benefit the Judges thought meet (I use Coke's own words) "to have openly and at large read the confessions of the said Richard Weston, and the testimonies of others, as well concerning the fact of the said Richard Weston as the Earl and Countess of Somerset, and Mrs. Turner; without sparing any of them, or omitting anything material against them." This was required (Coke said) by "the necessity and course of the evidence," because "it appeared thereby that the said Richard Weston was procured and wagered by some of them." A strange reason for a strange proceeding! For if the story could not be told without what amounted to a declaration from the Bench of the guilt of parties who had not yet been so much as accused, it would surely have been better to leave it untold. All that the audience needed to know was why the trial did not go

on; and for that it would have been enough to say that according to law a prisoner who refused to put himself upon his country could not be tried, and Weston refused to put himself upon his country. But Coke had not yet arrived at the great principle which he was destined to discover before he died;[1] and whether it were that he wished to commit the King irrevocably to the prosecution of Somerset, or only that he could not hold in his secret any longer, he certainly did think it right on that occasion for the Judges of the King's Bench "to deliver their opinion beforehand of a criminal case which was to come before them judicially,"—an opinion not private but conspicuously public,—and of a case in which they had not yet heard one word of what the accused persons had to say in explanation or defence. It is true that the story was told not by Coke himself, but by Sir Lawrence Hyde, the Queen's Attorney, who conducted the prosecution: but being told by direction and in presence of the Judges, it could not have been mistaken by the public for anything less than the declaration of the Court. And when Weston was persuaded at last to plead, and brought up again for trial on the 23rd of October, it had to be told over again.

2.

Before the trial commenced (into the details of which I need not enter, as Bacon had nothing to do with it) Weston expressed a hope that they were not making a net to catch the little fishes and let the great ones break through: words which seemed to imply a charge against others guiltier than himself. Coupled with the extraordinary revelations which had been made in Court, they naturally caused a great deal of curiosity and excitement, and the friends both of Overbury and of Somerset were impatient to hear the interpretation. On the morning of the 25th, the day appointed for his execution, a distinguished company assembled at Tyburn to hear his last words; and when it appeared that he was going to die without making any further disclosure, the following scene occurred, as described the next day by one who had a principal part in it.

"At the execution of Richard Weston there were present together Sir John Hollis, Sir Thomas Vavasor; Sir John Wentworth, Mr. Sackvill, Sir John Ayres, Sir William Mounson, Sir Henry Vane, and others: and many of them spake together, and asked Weston whether he had poisoned Sir Thomas Overbury or not? Whereupon this examinate asked Weston whether he poisoned Sir Thomas Overbury or no? Who answered

[1] See above, Chap. IV. § 6.

that he had left his mind behind with the Lord Chief Justice: and remembereth that upon his question to Weston, Sir John Wentworth said 'Sir John, it is nobly said,—ask him again:' but this examinate, seeing advantage taken of his words, held his peace."[1]

This examinate was Sir John Lidcot, brother-in-law of Overbury, who appears to have asked the question in the expectation that Weston would confirm the story that had been told, and so satisfy the world. Sir John Wentworth on the other hand was an ally of Somerset's, and urged him to repeat the question in the hope that he would repudiate it. On both sides the curiosity was natural enough, as we see to this day that whenever a man is convicted of murder with mystery there is always an intense curiosity to obtain a confession from him before he dies; but when a man had been by due process of law found guilty and was about to suffer the penalty, to ask him publicly whether he was guilty or not, was an affront to justice which could not be permitted or passed over. Several of the parties were committed to prison, and it was resolved to bring two of them —Sir John Wentworth and Sir John Hollis—before the Star Chamber: and along with them one Thomas Lumsden who, though not present on this occasion, had been guilty of a kindred offence in sending the King an account of the first day's proceedings in Weston's case, which being referred to Coke was pronounced "false and malicious." It was Bacon's duty to prepare the information against them: and it appears to have been the first proceeding connected with the Overbury trials in which he had to take any part, either private or public. But before the case came on, another important step had been taken.

When the King first heard of the adjournment of Weston's trial, he wanted him to be confronted in the interval with the Countess and with Mrs. Turner, and, if needful, with the Earl himself.[2] This, if it could have been done, would probably have cleared up several points which remain to this day doubtful. But Coke told him that "a re-examination or confronting, after a public conviction of the party delinquent, was not such as had been used in the course of his laws."[3] And it was not till the 25th of October, after Weston's execution, that Somerset was examined. The result of his examination that afternoon, and again on the 28th, was a report, signed by all the Commissioners, that there was "vehement suspicion, and that the matter upon consideration of the examinations and testimonies was

[1] The examination of Sir John Lidcot, Knight, taken this 26th of October, 1615. S. P. Dom. James I., vol. lxxxii. no. 109.
[2] Letter to Coke, 20 Oct.: to the Commissioners, 21 Oct. S. P. Dom. James I.
[3] The Judges to the King, 22 Oct. S. P. Dom. James I., vol. lxxii. no. 86.

pregnant against him for being accessary to the poisoning of Sir Thomas Overbury before the fact done:" and that it was "necessary that he should be committed to the Tower:"[1] and on the 2nd of November he was deprived of the seals and staff of office, and committed to the Tower accordingly.[2] On the 7th Mrs. Turner was tried as an accessary, found guilty, and sentenced to be hanged; though the sentence had not yet been carried out, when on the 10th Bacon had to appear in the Star Chamber and deliver his charge against the gentlemen who had questioned Weston on the scaffold.

This Charge was first printed, with a few omissions, by Wilson in his 'Life of James I.' (1653); afterwards, from another copy, by Rawley in the Resuscitatio; with the following title: "The charge of Sir Francis Bacon, the King's Attorney General, against M. L. S. W. and H. I. for scandal and traducing of the King's justice in the proceedings against Weston: In the Star Chamber 10 Novemb. 1615." The initials, as in the charge against Oliver St. John, were substituted for the names, in tenderness no doubt to the reputation of the persons implicated, or the feelings of their friends: a sentence in the Star Chamber being in those days regarded as a disgrace, which in their case there was no object in perpetuating. But there is among the State Papers a contemporary manuscript of this Charge which supplies the true names: and as it appears to me also to be a better copy, I have taken it for the text, giving the variations of Rawley's copy in the footnotes.

Sir Francis Bacon his accusation of Sir John Wentworth, Sir John Hollys and Mr. Lumsden.[3]

The offence wherewith I shall charge the three offenders at the bar, is a misdemeanor of a high nature, tending to the defacing[4] of justice in a great cause capital. The particular charge is this.

The King among many his princely virtues, is known to excel in that proper virtue of the imperial throne, which is Justice. It is a master virtue, unto which the other three are ministrant and do service.[5] Wisdom serveth[6] to discover, and discern of innocency and guiltiness.[7] Fortitude to prosecute and execute. And[8] temperance, so to carry justice as it be not passionate

[1] S. P. Dom. James I., vol. lxxxii. no. 58.
[2] Camden.
[3] S. P. Dom. James I., vol. lxxxiii. no. 15.
[4] Defacing and scandal: R.
[5] It is a royal virtue which doth employ the other three cardinal virtues in her service: R.
[6] Om. R.
[7] Discern nocent or innocent: R.
[8] Om. R.

in the pursuit, nor confused in involving persons,[1] nor precipitate in time. For this his Majesty's virtue of justice, in him so well attended,[2] God hath of late raised an occasion, and erected as it were a stage or theatre, much to his honour, for him to show it and act it, in the pursuit of the violent and untimely[3] death of Sir Thomas Overbury, and therein cleansing the land from blood. For, my Lords, if blood spilt pure cry to heaven, much more blood defiled with poison is not only a loud cry in God's ears, but (to use the Scripture phrase without niceness) it is also a stench in his nostrils, I say in the nostrils of God and man.[4]

This work of justice, the greater and more excellent it is,[5] you will soon conclude the greater is the offence of any that have sought to affront it or traduce it. And therefore, before I descend into the particular charge of these offenders, there I will begin;[6] speaking somewhat of the general crime of impoisonment, and then somewhat[7] of the particular circumstances of this fact upon Overbury; and thirdly and chiefly, of the King's great and worthy care and carriage in this business.

The offence of impoisonment is most truly figured in that device or description which was made of the nature of Caius Caligula,[8] that he was *lutum sanguine maceratum*, mire mingled or cemented with blood. For as it is one of the highest offences in guiltiness, so it is the basest of all others in the mind of the offenders. Treasons *magnum aliquid spectant*: they aim at great things; but this is vile and base. I tell your Lordships what I have noted, that in all God's books[9] both of the old and new testament, I find examples of all other offences and offenders in the world in their kinds,[10] but not any one of impoisonment[11] or an impoisoner. I find mention of some[12] fear of casual impoisonment: when the waters were corrupted and bitter,[13] they came complaining in a fearful manner; Master, *mors in olla*. And I find mention of poisons of beasts and serpents; *the poison of asps*

[1] In involving persons upon light suspicion: R.
[2] R. omits this clause.
[3] R. omits "violent and."
[4] R. has only "if blood spilt pure doth cry to Heaven in God's ears, much more blood defiled with poison:" omitting the rest.
[5] This great work of his Majesty's justice the more excellent it is, your Lordships: R.
[6] Before I descend unto the charge of these offenders, I will set before your Lordships the weight of that which they have sought to impeach: R.
[7] R. omits "somewhat."
[8] Of one of the Roman tyrants: R.
[9] Book: R.
[10] R. omits "in their kinds."
[11] An impoisonment: R.
[12] R. omits "some."
[13] When the wild vine was shred into the pot: R.

is under their lips says the Psalm ;[1] but I find no example in a human creature of a malicious and a murderous impoisonment. I think it was upon Solon's reason concerning parricide, *ne prohibendo admonere videretur*.[2] I have sometime thought of the words in the psalm, *let their table be made a snare:* which certainly is most true of impoisonment; for the table, the daily bread for which we pray, is turned to a deadly snare. But I think sure[3] that that was meant of the treachery of friends that were participitant of the same table.

But let us go on. It is an offence, my Lords, that hath the two spurs of offending; *spes perficiendi,* and *spes celandi:* it is easily committed, and easily concealed. It is an offence that is *tanquam sagitta nocte volans;* it is the arrow that flies by night, it discerns not whom it hits; for many times the poison is laid for one, and the other takes it. As in Sanders' case, where the poisoned apple was laid for the mother, it[4] was taken up by the child, and killed the child. And so in that notorious case, whereupon the statute of 22 Hen. VIII. cap. 9, was made, where the intent being to poison but one or two, poison was put into a little vessel of barm that stood in the kitchen of the Bishop of Rochester's House; of which barm porrage or gruel was made, wherewith seventeen of the Bishop's family were poisoned. Nay divers of the poor that came to the Bishop's gate, and had the broken porrage in alms, were likewise poisoned.

And therefore if any man will comfort himself, or think with himself, Here is great talk of impoisonment, I hope I am safe; for I have no enemies, nor I have nothing that anybody should long for: why that is all one; for he may sit at table by one for whom poison was prepared, and have a drench of his cup, or of his porrage. And so, as the poet saith, *concidit infelix alieno vulnere;* he may die another man's death. And therefore it was most gravely, and judiciously, and properly provided by that statute, that impoisonment should be high treason; because whatsoever offence tendeth to the utter subversion and dissolution of human society, is in the nature of high treason.

Lastly, it is an offence that I may truly say of it, *non est nostri generis, nec sanguinis.* It is, thanks be to God, rare in

[1] R. omits " says the Psalm."
[2] R. has only " But I find no example in the book of God of empoisonment."
[3] Rather: R.
[4] And: R.

the island[1] of Britany. It is neither of our country, nor of our church. You may find it in Rome and[2] Italy. There is a region[3] for it. And if it should come amongst us, certainly it were better living in a wilderness than in a court.

For the particular fact upon Overbury. First, for the person of Sir Thomas Overbury: I knew the gentleman. It is true, his mind was great, but it moved not in any great[4] good order; yet certainly it did commonly fly at good things. And the greatest fault that ever I heard by him was, that he made his friend his idol. But I leave him as Sir Thomas Overbury.

But then take him as he was the King's prisoner in the Tower, and then see how the case stands. In that place the State is as it were a respondent to make good the body of a prisoner. And if anything happen to him there, it may (though not in this case, yet in some others) make an aspersion and a reflexion upon the State itself. For the person is utterly out of his own defence. His own care and providence can serve him to nothing.[5] He is in custody and preservation of law. And we have a maxim in our law (as my Lords the Judges know) that when a state is in preservation of law, nothing can destroy it, or hurt it. And God forbid but the like should be in persons.[6] And therefore this was a circumstance of great aggravation.

Lastly, To have a man chased to death in such manner (as it appears now by matter of record; for other privacy of the cause I know not[7]) by poison after poison, first roseaker, then arsenick, then mercury sublimate, then sublimate again; it is a thing would astonish man's nature to hear it. The poets feign the Furies had whips, and that they were corded with poisonous snakes; and a man would think that this subject[8] were the very case, to have a man tied to a post, and to scourge him to death with snakes: for so may truly be termed diversity of poisons.

Now I will come to that which is principal; which is,[9] his Majesty's princely, yea and as I may truly term it sacred proceed-

[1] Isle: R.
[2] or: R.
[3] A region or perhaps a religion: R.
[4] R. omits "great."
[5] R. omits "to."
[6] For the persons of those that are in custody of law: R.
[7] So in R. The MS. has "in the manner (as of the cause I know not),"—a line having evidently been missed by the transcriber.
[8] R. omits "subject."
[9] The principal: that is: R.

ing in this cause; wherein I will first speak of the temper of his justice, and then of the strength thereof.

First, it pleased my Lord Chief Justice to let me know, that which I heard with great comfort, which was the charge that his Majesty gave to himself first, and afterwards to the Commissioners in this case, worthy certainly to be written in letters of gold. Wherein his Majesty did forerank and make it his prime direction, that it should be carried without touch to any that was innocent. Nay more, not only without impeachment, but without aspersion. Which was a most noble and a princely caution from his Majesty. For men's reputations are tender things, and ought to be used like Christ's coat, which was without seam.[1] And it was the more to be respected in this case, because it met with two great persons; a nobleman that his Majesty had favoured and advanced, and his Lady being of a great and honourable house (though I think it be true, that the writers say, that there is no pomegranate so fair or so sound, but may have a perished kernel). Nay, I see plainly, that in those excellent papers of his Majesty's own hand-writing, being as so many beams of justice issuing from that virtue which doth so much[2] shine in him; I say, I see it was so evenly carried without prejudice, whether it were a true accusation of the one part, or a practice of a false accusation of[3] the other, as shewed plainly that his Majesty's judgment was *tanquam tabula rasa*, as a clean pair of tables, and his ear *tanquam janua aperta*, not side open,[4] but wide open to truth, as it should be discovered.[5] Nay, I see plainly that at the first (till further light did break forth) his Majesty did not vouchsafe to call the first tale an information, but a rumour. This was a singular temper and indifferency.[6]

As for the strength or resolution of his Majesty's justice, I must tell your Lordships plainly, I do not marvel to see Kings thunder out justice in cases of treason, when they are touched themselves, and that they are *vindices doloris proprii:* but that a King should, *pro amore justitiæ* only, and[7] contrary to the

[1] Ought to be like Christ's coat without seam: R.
[2] R. omits "so much."
[3] On: R.
[4] By little and little discovered: R.
[5] As a gate, not side open: R.
[6] Was little moved with the first tale; which he vouchsafeth not so much as the name of a tale; but calleth it a *rumour*, which is an headless tale: R.
[7] R. omits "and."

tide of his own affection, for the preservation of his own[1] people, take such care of a case of justice, that is rare and worthy to be celebrated far and near. For I think I may truly affirm, that there was never in this kingdom, nor in any other kingdom, the death of a private gentleman vindicated *cum tanto motu regni*, or to say better *cum tanto plausu regni*. If it had concerned the King or Prince, there could not have been better nor greater commissioners.[2] The term hath been almost turned into a *justitium*, or vacancy; the people themselves being more willing to be lookers-on in this business, than proceeders in their own.[3] There hath been no care of discovery omitted, nor no moment of time lost. And therefore I will conclude this part with the saying of Salomon, *Gloria Dei celare rem, et gloria Regis scrutari rem.* And his Majesty's honour is the greater,[4] for that he hath shewed to the world in this business as it hath relation to my Lord of Somerset, (whose case I do in no sort[5] prejudge, being ignorant of the secrets of the cause, but take[6] him as the law takes him hitherto for a suspect) I say, the King hath to his great honour shewed, that were any man, in such a case of blood, as the signet of[7] his right hand, (as the Scripture says,) he would put him off.[8]

Now will I come to the particular charge of these gentlemen, whose qualities and persons I respect and love; for they are all my particular friends. But now I can only do this duty of a friend to them, to make them know their fault to the full.

And therefore first I will by way of narrative tell you[9] the fact, with the occasion of it; then you shall have their confessions read, upon which you are to proceed, together with some collateral testimony[10] by way of aggravation. And lastly I will note and observe to your Lordships the material points which I do insist upon for their charges,[11] and so leave them to their answer. And this I will do very briefly. For the case is not perplexed.

That wretched man Weston, who was the actor or mechanical party in this impoisonment, at the first day being indicted by a very substantial jury of selected citizens, to the number of nine-

[1] R. omits "own." [2] Greater nor better commissioners to examine it: R.
[3] Than to follow their own: R. [4] Much the greater: R.
[5] In no sort I do: R. [6] Taking: R. [7] Upon: R.
[8] Yet would he put him off: R. [9] Declare to your Lordships: R.
[10] Testimonies: R. [11] Charge: R.

teen, who found *billa vera,* yet nevertheless at the first stood mute. But after some days intermission, it pleased God to cast out the dumb devil, and that he did put himself upon his trial; and was by a jury also of great value, upon his own confessions,[1] and other testimonies, found guilty. So as thirty-one sufficient jurors have passed upon him, and then he had also his judgment and execution awarded.[2] After this, being in preparation for another world, he sent for Sir Thomas Overbury's father, and falling down upon his knees, with great remorse and compunction, asked him forgiveness. And[3] afterwards again of his own motion, desired to have his like prayer of forgiveness recommended to his mother, who was absent. And at both times out of the abundance of his heart confessed that he was to die justly, and that he was worthy of death. And after again at his execution (which is a kind of sealing time of confessions,) even at the point of death, (although there were tempters about him, as you shall hear[4]) yet he did again confirm publicly, that his examinations were true, and that he had been justly and honourably dealt with. So here is the period of this man, which was the subject of this calumny and affront of justice, which I shall now open to you respectively against these offenders.

Wherein first Mr. Lumsden plays his part,[5] whose offence stands alone single, the offence of the other two being in consort; and yet all three meeting in their end and center, which was to interrupt or deface this excellent piece of justice. Mr. Lumsden I say, mean while[6] between Weston's standing mute and his trial, takes upon him to make a most false, odious, and libellous relation, containing as many untruths as lines, and sets it down in writing with his own hand, and delivers it to Mr. Henry Gibbe, of the bed-chamber, to be put into the King's hands.[7] In which writing he doth falsify and pervert all that was done the first day at the arraignment of Weston; turning the pike and point of his accusations[8] upon my Lord Chief Justice of England. Whose name thus occurring I cannot pass by, and yet I cannot

[1] Upon his confession: R.
[2] Whereupon judgment and execution was awarded against him: R.
[3] R. omits "and." [4] Hear by and by: R.
[5] Instead of the words from "So here" to "plays his part," R. has "Here is the narrative, which induceth the charge. The charge itself is this. Mr. L.," etc.
[6] So R. The MS. omits "while." [7] hand: R.
[8] Imputations principally: R.

skill of this same flattery or vulgar attributes.[1] But this I will say of him, and I would say as much to ages; I would write it if cause were;[2] that never man's person and his place were better met in a business, than my Lord Chief Justice and my Lord Coke in the cause of Overbury.

Now, my Lords, for this offence of Mr. Lumsden's;[3] for the particulars of these slanderous articles, I will observe them unto you[4] when the writings and examinations are read; for I do not love to set the gloss before the text. But in general I note unto you these things.[5] First, in the person of Mr. Lumsden. I know he is a Scotch gentleman, and thereby more ignorant of our laws and forms; but I cannot tell whether this do extenuate his fault or increase it. For as it may extenuate it in respect of ignorance, so it doth aggravate it much, in regard of presumption,[6] that he would meddle in that that he understood not. But I doubt it came not out of his quiver. Some other man's cunning wrought upon this man's boldness. Secondly, I may note unto you the greatness of the cause, wherein he being a private gentleman[7] did presume to deal. Mr. Lumsden[8] could not but know to what great and grave commissioners the King had committed this cause. And that his Majesty in his wisdom would expect a return of all things from them to whose trust he had committed this business. For 'tis the part of commissioners, as well to report the business, as to manage the business; and then his Majesty mought have been sure to have had all things well weighed, and truly informed. And therefore it should have been far from Mr. Lumsden to have put forth his hand to a business of this nature.[9] Thirdly, I note to your Lordships that this same infusion of slander[10] into a King's ear, is of all forms of libels and slanders the worst. It is true that Kings

[1] And yet I cannot skill to flatter: R.
[2] To ages, if I should write a story: R.
[3] In this offence of M. L.: R.
[4] So R. The MS. has "for this offence of Mr. Lumsden's for the particulars of these slanderous articles I will observe unto you," etc.
[5] So MS. But for "these" we should probably read "three." R. has "I note to your Lordships, First, the person of M. L."
[6] Whether this doth extenuate his fault in respect of ignorance or aggravate it much in respect of presumption: R.
[7] A private mean gentleman: R.
[8] M. L.: R.
[9] It should have been far from M. L. to have presumed to have put forth his hand to so high and tender a business which was not to be touched but by employed hands: R.
[10] This infusion of a slander: R.

may keep secret their informations, and then no man ought to enquire after them, while they are shrined in their breast. But where a King is pleased that a man shall answer for his false information, there the false information to a King exceeds in offence the false information of any other kind.[1] And in this (if cause be) I shall shew you divers precedents of slanderous petitions which have been as severely punished as slanderous libels. And thus much for the offence of Mr. Lumsden.[2]

For the offence of Sir John Wentworth and Sir John Hollys,[3] which I said was in consort, it was shortly this. At the time and place of the execution of Weston, to supplant his Christian resolution, and to scandalize the justice already past, and perhaps to cut off the thread of somewhat that is to come,[4] these gentlemen with others came mounted on horseback, and in a ruffling and facing manner presumed[5] to re-examine Weston upon questions: and what questions? Directly cross to that that had been tried and judged. For what was the point tried? That Weston had poisoned Overbury. What was Sir John Wentworth's[6] question? Whether Weston did poison Overbury or no? A contradictory directly. Whereupon Weston answered,[7] that he did him wrong; and turning to the sheriff, said, You promised me that[8] I should not be troubled at this time. And yet[9] nevertheless he pressed him to answer[10] that he mought pray with him. I know not that Sir John Wentworth[11] is an ecclesiastic, that he should cut any man from the communion of prayer. And yet for all this vexing of the spirit of a poor man, now in the gates of the death;[12] Weston nevertheless stood constant, and said, I die not unworthily; my lord Chief Justice hath my mind under his[13] hand, and he is an honourable and just judge. Here is Sir John Wentworth's offence.[14]

For Sir John Hollys[15] he was not so much a questionist; but wrought upon the other's questions, and, like a counsellor,[16] wished

[1] R. adds, "Being a kind, since we are in matter of poison, of impoisonment of a King's ear," omitting the rest.
[2] M. L.: R.
[3] S. W. and H. I.: R.
[4] That which is to come: R.
[5] Put themselves forward: R.
[6] S. W.'s: R.
[7] Weston answered only: R.
[8] R. omits "that."
[9] R. omits "and yet."
[10] Saying that he desired to know it, that, etc.: R.
[11] S. W.: R. And so throughout.
[12] Of death: R.
[13] my hand: R.
[14] This is S. W. his offence: R.
[15] H. I.: R. And so throughout.
[16] Kind of confessor: R.

him to discharge his conscience, and to satisfy the world. What world I marvel? it was[1] the world at Tyburn. For the world at Guildhall, and the world at London, was satisfied before; *teste* the bells that rang. But men have got a fashion now-a-days, that two or three busy-bodies will take upon them the name of the world, and broach their own conceits as if it were a general opinion. Well, what more? When they could not work upon Weston, then Sir John Hollys in an indignation turned about his horse, when the other was turning over the ladder, and said, he was sorry of such a conclusion; that was, to have the state honoured or justified; but others took and reported his words in another degree.[2]

Sir John Hollys his offence hath[3] another appendix, before this in time; which was, at the day of the trial he presumed to give[4] his verdict, saying openly, that if he were of the jury, he would doubt what to do. Marry, he saith he cannot tell[5] whether he spake this before the jury had given up their[6] verdict, or after. Wherein there is little gained. For whether he were a pre-juror or a post-juror, the one was to prejudge the jury, the other to taint them.[7]

Of the offence of these two gentlemen in general, your Lordships must give me leave to say, that it was[8] an offence greater and more dangerous than is conceived. I know well that as we have no Spanish inquisitions, nor justice in a corner, so we have no gagging of men's mouths at their death; but that they may speak freely at the last hour. But then it must come from the free motion of the party, not by temptations[9] of questions. The questions that are to be asked ought to tend to further revealing of their own or others' guiltiness. But to use a question in the nature of a cross[10] interrogatory, to falsify that which is *res judicata*, is intolerable. For that were to erect a court or commission of review at Tyburn, against the Courts[11] at Westminster. And besides, it is a thing vain and idle. For if they answer according to the judgment past, it adds no credit;

[1] It was sure: R.
[2] R. adds "but that I leave, seeing it is not confessed."
[3] Had: R.
[4] That at the day of the verdict given up by the Jury he also would needs give: R.
[5] Tell well: R. [6] The: R.
[7] The one was as to prejudge the Jury the other as to taint them: R.
[8] Is: R. [9] Temptation: R. [10] False: R. [11] King's Bench: R.

nor if it be contrary, it derogateth nothing. But yet it subjecteth the majesty of justice to popular and vulgar talk and opinion.

My Lords, these are great and dangerous offences. For if we do not maintain justice, justice will not maintain us. But now you shall hear the examinations themselves. Upon which I shall have occasion to note some particular things.

3.

This was all that Bacon had to do with the trials of the commoners implicated in the murder of Overbury; which took place in Guildhall, and were entirely managed by Coke in every stage from examination to sentence. And even for the purpose of this proceeding in the Star Chamber it appears that it was from Coke that he derived all his information. It was not till the beginning of the next year, when things were at length ready for the indictment of the Somersets, that he was called into council upon the case.

In the meantime he had a civil case in hand, which was appointed to come on in a few days, but for which, as it involved a constitutional question of some importance between the King and the Judges, he did not think the time favourable. Three or four years before, Mr. John Murray, of his Majesty's bedchamber, whom I have already mentioned as a great absorber of the royal bounties, had procured a new patent office for one John Michell. It gave him the sole making of writs of *supersedeas quia improvide emanavit* in the Common Pleas, and thereby interfered with the profits hitherto taken by the Prothonotary: who after considerable delay "brought an assise" to be restored to the possession of the ancient fees belonging to his office, and so raised the question of the legality of the new patent. Bacon conceived that this was a question in which the King had an interest, and which according to the "ancient and ever-continued law of the Crown" was to be tried "before the King himself as he is represented in Chancery."[1] And this was the point which now stood for decision. When the assise was brought in the King's Bench (which was in 13° Jac I.), he had endeavoured to stop the proceeding by a writ *de non procedendo ad assisam Rege inconsulto;* the validity of which being disputed, counsel had been heard on both sides in Trinity Term, and a further hearing appointed for the 20th of November. This, as it happened, fell in the very heat of the excitement about the trial of the murderers of Overbury; which

1 "Innovations introduced into the laws and government."

was inconvenient, and made Bacon wish it postponed; as we see by the second paragraph of the following letter.

The "cause prosecuted by Lord Hunsdon" (which is the subject of the first paragraph) was a suit in Chancery, in behalf of the King and Lord Hunsdon as his farmer for a certain manor, claimed as forfeited to the Crown, against the Countess Dowager of Arundel and Lord William Howard. "This cause," says Hobart, who along with Coke was called to assist the Lord Chancellor in the hearing of it, "hung long and had many hearings and briefs delivered, and after long consideration was this term with uniform consent of the Lord Chancellor, us the Judges, and Master of the Rolls, decreed for the King."[1]

To the King's most Excellent Majesty.[2]

It may please your excellent Majesty,

I received this very day, in the forenoon, your Majesty's several directions touching your cause prosecuted by my L. Hunsden as your farmer. Your first direction was by Sir Cr. Parkins, that the day appointed for the judicial sentence should hold: and if my L. Ch. Justice upon my repair to him should let me know that he could not be present, then my L. Chancellor should proceed, calling to him my Lord Hubbard, except he should be excepted to; and then some other judge by consent. For the latter part of this your direction; I suppose there would have been no difficulty in admitting my L. Hubbard; for after he had assisted at so many hearings, it would have been too late to except to him. But then your Majesty's second and later direction (which was delivered unto me from the Earl of Arundel, as by word of mouth, but so as he had set down a remembrance thereof in writing freshly after the signification of his pleasure,) was to this effect: that before any proceeding in the Chancery, there should be a conference had between my L. Chancellor, my L. Chf. justice, and myself, how your Majesty's interest mought be secured. This later direction I acquainted my L. Chancellor with; and finding an impossibility, that this conference should be had before to-morrow, my L. thought good that the day be put over; taking no occasion thereof other than this, that in a cause of so great weight it was fit for him to confer with his assistants, before he gave any decree or final order.

[1] Sir H. Hobart's Reports, p. 109.

[2] Balfour MSS.

After such time as I have conferred with my Lords according to your commandment, I will give your Majesty account with speed of the conclusion of that conference.

Furder I think fit to let your Majesty know that in my opinion I hold not it a very fit time to proceed in the business of the *Rege inconsulto*, which is appointed for Monday. I did think these greater causes would have comen to period or pause sooner: but now they are in the height; and to have so great a matter as this of the *Rege inconsulto* handled when men do *aliud agere*, I think it no proper time. Besides, your Majesty in your great wisdom knoweth, that this business of Mr. Murray's is somewhat against the stream of the Judges' inclination: and it is no part of a skilful mariner to sail or row against a tide, when the tide is at strongest. If your Majesty be pleased to write to my Lord Cook that you would have the business of the *Rege inconsulto* receive a hearing, when he should be *animo sedato et libero*, and not in the midst of his assiduous and incessant cares and industries in other practices, I think your Majesty shall do your service right. Howsoever, I will be provided against the day.

Thus praying to God for your happy preservation, whereof God giveth you so many great pledges, I rest,

Your Majesty's most humble
and devoted subject and servant,
FR. BACON.

17 Nov. 1615.

In accordance with this advice the King wrote to Coke the next day from Newmarket, wishing him to appoint some time for hearing the great cause of *Rege inconsulto*, when it might be heard *sedato animo*.[1] It was adjourned accordingly to the next term, when we shall hear of it further.

4.

How and when Bacon first became acquainted with Sir George Villiers would be well worth knowing; but there is no record of it to be found. It was in the autumn of 1614 that Villiers first attracted the King's notice. On the 23rd of April in the next year he was knighted and made a gentleman of the bedchamber, and re-

[1] S. P. Dom. James I., vol. lxxxiii. no. 44.

ceived a pension of £1000. In the following January we find Bacon corresponding with him in the style of a familiar acquaintance. But when and in what circumstances they were introduced to each other we have no means of knowing. In such a relation, acquaintance would ripen fast. A very young man, modest and unassuming as yet, of a sweet countenance, and with gracious open and easy manners, rising suddenly into so distinguished a position, might naturally either seek or be sought by Bacon, whose age and eminence would entitle him, and whose taste and disposition would lead him, to be at once familiar. Five or six years after, when Villiers had suffered a course of advancement rapid and unexpected enough to turn any man's head, we have evidence from a quarter quite unprejudiced of the charm which still hung about the outside of him. At a tilt given in honour of the French ambassador on the 8th of January, 1620–1, Simonds D'Ewes, then a boy of eighteen, had a long look at him; and the record of his impression set down in later life shows that neither time nor experience, nor the bitter political hostility of the party to which he belonged, had been able to efface the pleasing image which it left in his memory.

"After this, most of the tilters, except the Prince, went up to the French Lords in a larger upper room of the house, standing at the lower end of the tilt-yard; and I crowding in after them, and seeing the Marquis of Buckingham discoursing with two or three French Monsieurs, I joined them, and most earnestly viewed him for about half an hour's space at the least; which I had opportunity the more easily to accomplish, because he stood all the time he talked bareheaded. I saw everything in him full of delicacy and handsome features; yea his hands and face seemed to me especially effeminate and curious. It is possible he seemed the more accomplished, because the French monsieurs that had invested him were very swarthy hardfavoured men. That he was afterwards an instrument of much mischief both at home and abroad, is so evident upon record as no man can deny; yet this I do suppose proceeded rather from some Jesuitical incendiaries about him, than from his own nature, which his very countenance promised to be affable and gentle."[1]

There is no better testimony of our good opinion of a man than an inclination to think that whatever we do not like in him is the fault of somebody else—especially when we do not know whose; and we may judge how attractive a person Villiers must have been in the days of his first rising, when as yet he had not offended or disappointed anybody, from the fact that after all the offence he had given

[1] 'Autobiography of Sir Simond D'Ewes,' vol. i. p. 166.

to the Puritans, so formal and orthodox a Puritan as D'Ewes could retain so agreeable an impression of him. I doubt whether any favourite of any sovereign *seemed* more likely to become a universal favourite than George Villiers when he first appeared in Court.

The first communication that has been preserved between him and Bacon is merely a compliment. But it supplies us with a date of some importance,—the date of Bacon's first appearance (the first that we know of) upon the commission for the indictment of Somerset. It shews also incidentally that he had already had something to do with another business, of which we shall hear more a little further on. A valuable patent office, held at present by Sir John Roper, had been granted in reversion to Somerset jointly with Lord Harington. Harington dying without issue, his share in the reversion was purchased from his executors by Somerset. The profits of the office were derived from fees paid for the enrolment of Pleas in the Court of King's Bench, and the propriety of disposing of them in this way was so far doubtful that it was thought prudent to keep the real holders out of sight by making out the patent in the names of other persons, who by a private and separate arrangement covenanted to pay the proceeds to the great men, reserving to themselves a twelfth part for "execution."[1] Though the grant of the reversion of the office upon this condition to two lawyers, Heath and Whitelocke, had been confirmed by Coke as Chief Justice of the King's Bench,[2] it seems that he had taken some objection to the proceeding on grounds either of law or policy; and that some difficulty was apprehended at his hands whenever the office itself should become vacant again. It was not yet vacant: but a rumour of the death of Sir John Roper gave rise to the conversation reported in the following letter; which proves that there had been some dispute about the disposal of the office, though it does not help to explain the grounds. But whatever may have been the point of Coke's objection, if it involved a questioning of the King's right to dispose of the place (as I suppose it did), it would be Bacon's business as Attorney-General to defend it, and so they would necessarily come into collision.

The King's intention to bestow the patent upon Villiers as soon as it came into his hands again was probably no secret.

[1] Whitelocke, Lib. Famel. p. 47. [2] Ibid. p. 59.

A LETTER TO SIR GEORGE VILLIERS, TOUCHING ROPER'S PLACE. 22 JAN. 1615.[1]

Sir,

Sending to the King upon occasion, I would not fail to salute you by my letter; which, that it may be more than two lines, I add this for news; that as I was sitting by my Lord Chief Justice, upon the commission for the indicting of Somerset, one of the Judges asked him whether Roper were dead. He said he for his part knew not; another of the Judges answered, It should concern you, my Lord, to know it. Whereupon he turned his speech to me and said No, Mr. Attorney, I will not wrastle now in my latter times. My Lord (said I) you speak like a wise man. Well (saith he) they have had no luck with it that have had it. I said again, Those days be past. Here you have the dialogue to make you merry. But in sadness I was glad to perceive he meant not to contest. I can but honour and love you, and rest

Your assured friend and servant,

FR. BACON.

22 January, 1615.

5.

From the letter to the King, which bears the same date as the last and probably travelled with it, we learn what Bacon's first impression was on examining the case against Somerset. The evidence consisted chiefly of confessions obtained from the subordinate actors before their trial, and could not now be altered or added to. Weston, the under gaoler, who was charged with administering the poisoned food; Mrs. Turner, the procuress, who was charged with putting the poison into it; Helwysse, the Lieutenant of the Tower, who had known what was going on and connived at it; Franklin, the apothecary, who had supplied the poisons to Mrs. Turner;—all these had been examined, indicted, tried, found guilty, and hanged. And whatever may be thought of the sufficiency of the evidence upon which they were convicted—of which, by the way, I doubt whether any of the reports are complete enough to give us the means of judging,—we need not scruple to believe that they were all guilty, because before they died, when they could have no motive for accusing themselves falsely, they all confessed their guilt. But though

[1] Gibson Papers, vol. viii. f. 22. Fair copy; docketed in Bacon's hand.

a man's evidence, however bad his character, may generally be accepted as conclusive against himself, it is plain that, as against other people, the testimony of actors in such a business as this stood in need of corroboration. It is true that they had all been examined, and confronted, and re-examined, as often as Coke thought necessary, and that *to him* the depositions seemed conclusive enough not only to make a case for a jury, but to justify provisional announcements "for the satisfaction of the multitude" that the case was proved. Besides the declarations in Court which he had authorized on the 19th and 23rd of October, in which the complicity of the Earl and Countess of Somerset was distinctly indicated, he had made other extraordinary announcements with his own mouth. On the 27th of November he had informed the public from the Bench in open court that "knowing as much as he knew, if this plot had not been found out, neither Court, city, nor many particular houses had escaped the malice of that wicked crew."[1] And again on the 4th of December (having been ordered to postpone the trial of one of the prisoners, and fearing that the public might draw some false inference in his favour) he had taken occasion in the same public manner to declare not only that the proofs against him were clear, but that secrets had been discovered which, though he might not yet disclose them, "made our deliverance as great as any that happened to the children of Israel." But all this made the case only the more difficult to deal with. When announcements like these were made by the Chief Justice from the Bench, it was of the first importance that the evidence when produced should bear them out; for otherwise the popular conclusion would inevitably be that something had been hushed up. If the Lords should acquit Somerset after what Coke had said of the evidence to convict him, what could people think but that the great fish had broken through the net? If, when evidence of such a portentous conspiracy was in the possession of the Lord Chief Justice, no one should be called in question,—what could they think but that somebody was implicated with whom justice dared not meddle? Now it unfortunately happened that when Coke was inclined to believe a thing, very little evidence was enough for him; and that which had satisfied him on this occasion could not be expected to satisfy anybody else. Of the great conspiracy which he thought he had discovered, and the discovery of which he had thus prematurely announced, he had absolutely no evidence at all beyond the uncorroborated declarations of a man under sentence of death who was pretending secrets in order to prolong his life. And with regard to

[1] Effect of James Franklin's arraignment. 27 Nov. 1615. S. P. Dom. James I.

Somerset, the particular piece of testimony which he regarded as "*sufficient* matter against him,"—meaning of course matter sufficient to ensure conviction,"—was upon the very face of it, as reported by himself, obviously and utterly insufficient. For the question being whether *the Earl* was an accessary to the death of Overbury *before* the fact, the "sufficient matter" was Franklin's confession of a conference two years *after* the death of Overbury with the *Countess*, during which she went into an adjoining room and returned out of it, having (as was *supposed*) taken instructions from the Earl, who was *supposed* to be within. So that even if the evidence had been sufficient to prove that they were *then* in guilty collusion (which it plainly was not, since the witness neither saw the man nor heard what he said), it could not at the very worst prove more than that he was an accessary *after* the fact. But to Coke in his present humour anything was evidence which implied accusation, and finding that Mrs. Turner's maid-servant could say that the Earl was in the house at the time, he set down the whole thing as proved; and wanting no further testimony from Franklin, had him brought up for trial forthwith.[1]

This was on the 27th of November. But the trial of the Earl could not be proceeded with for some time to come; the Judges having decided that he must not be tried before the Countess, who, being with child, could not be tried till after her delivery, which did not take place till the 9th of December. On the 19th of January however they were both indicted for procuring and consenting to the murder of Overbury, as accessaries before the fact; and a true bill was found against them.[2] And I think it must have been on the same day that Bacon (who having to draw the indictments and conduct the prosecution had at last been allowed to see the papers) had an interview with the King, and gave him his opinion and advice upon the case. What it was we learn from the next letter, in which he thought it expedient to repeat and enforce it. This letter was first printed, I believe, in the Cabala (ed. 1663. p. 33). But there is a copy of it in Bacon's own collection; and from this I take it. It is not to be found in the Resuscitatio; in which Rawley withheld all the papers relating to the trial of Somerset;—out of considera-

[1] "He was not proceeded withal until he had discovered sufficient matter against the Earl of Somerset, and that I had fortified his testimony by other witnesses which by God's providence I attained unto. . . . Now, forasmuch as he charges the Earl in such direct and particular manner, he was demanded openly at the Bar whether his examinations, then shewed to him, taken before me and subscribed by his own hand were not true, which openly and clearly he confessed to be true divers times." Coke to the King, 27 Nov. 1615.

[2] Camden. Lord Carew's Letters (Camden Soc.), p. 23.

tion, I suppose, for the feelings of his daughter, who was still living—the mother of William Lord Russell.

THE KING'S ATTORNEY'S LETTER TO THE KING TOUCHING THE PROCEEDING WITH SOMERSET,[1] THE 22ND OF JANU. 1615.

It may please your most excellent Majesty,

At my last access to your Majesty, it was fit for me to consider the time and your journey, which maketh me now trouble your Majesty with a remnant of that I thought then to have said: besides your old warrant and commission to me, to advertise your Majesty when you are *aux champs*, of anything that concerned your service and my place. I know your Majesty is *nunquam minus solus, quàm cum solus;* and I confess, in regard of your great judgment (unto which nothing ought to be presented but well weighed) I could almost wish that the manner of Tiberius were in use again, of whom Tacitus saith, *Mos erat quamvis præsentem scripto adire;* much more in absence.

I said to your Majesty that which I do now repeat, that the evidence upon which my Lord of Somerset standeth indicted is of a good strong thread, considering impoisoning is the darkest of offences; but that the thread must be well spun and woven together. For your Majesty knoweth it is one thing to deal with a jury of Middlesex and Londoners, and another to deal with the Peers; whose objects perhaps will not be so much what is before them in the present case (which I think is as odious to them as to the vulgar) but what may be hereafter. Besides, there be two disadvantages we that shall give in evidence shall meet with, somewhat considerable. The one, that the same things often opened leese their freshness, except there be an aspersion of somewhat that is new. The other is the expectation raised, which makes things seem less than they are, because they are less than opinion. Therefore I were not your Attorney nor myself, if I should not be very careful, that in this last part, which is the pinnacle of your former justice, all things may pass *sine offendiculo, sine scrupulo.* Hereupon I did move two things, which (having now more fully explained myself) I do in all humbleness renew. First, that your Majesty will be careful to choose a Steward of judgment, that may be able to

[1] Add. MSS. 5503. f. 80.

moderate the evidence and cut off digressions; for I may interrupt, but I cannot silence. The other, that there may be special care taken for the ordering of the evidence, not only for the knitting, but for the list, and (to use your Majesty's own word) the confining of it. This to do, if your Majesty vouchsafe to direct it yourself, that is the best; if not, I humbly pray you to require my Lord Chancellor, that he together with my Lord Chief Justice will confer with myself, and my fellows, that shall be used, for the marshalling and bounding of the evidence, that we may have the help of his opinion, as well as that of my Lord Chief Justice; whose great travels as I much commend, yet that same *plerophoria*, or over-confidence, doth always subject things to a great deal of chance.

There is another business proper for me to crave of your Majesty at this time (as one that have in my eye a great deal of service to be done) concerning your casual revenue; but considering times and persons, I desire to be strengthened by some such form of commandment under your royal hand, as I send you here inclosed. I most humbly pray your Majesty to think I understand myself right well in this which I desire, and that it tendeth greatly to the good of your service. The warrant I mean not to impart but upon just occasion. Thus thirsty to hear of your Majesty's good health, I rest——.

At this time it was intended, I presume, to proceed with the arraignments at once. But important despatches having been received from Sir John Digby, then ambassador in Spain, from which it appeared that Somerset had had some underhand intelligence with the Spanish ambassador, and revealed things to him which were meant to be kept secret, it was thought necessary to inquire into that matter first. Digby was accordingly sent for: the prosecution for the murder was postponed: and the stage was left clear during the interval for the other businesses then waiting for settlement. The most important of these were questions in dispute between the Crown and the Judges, in which of course the Attorney-General acted on behalf of the Crown. This brought Bacon into continual correspondence with the Court, and during the next month his communications with the King and with Villiers are so frequent and so full that they explain themselves.

6.

The first of these businesses that came on was the great question of the *Rege Inconsulto;* the hearing of which had been adjourned, as we saw, the last term, in consideration of Coke's being busy with the murder case. On the 25th of January the argument was resumed, and Bacon made a great speech (a report of which will be found in its place among the Professional Works) in defence of the writ: with what effect, we learn from the next letter; of which we have two copies:—one preserved in his own collection (which I take to be a transcript of as much of the first draft as was finished); the other, the letter itself which was sent to the King and is now in the Advocates' Library. As an illustration of the relation between Bacon's first drafts and fair copies, I give them both.

A LETTER FROM THE KING'S ATTORNEY TO THE KING TOUCHING THE REGE INCONSULTO: NOT PERFECT. 27 JANU. 1615.[1]

It may please your most excellent Majesty,

It pleased your Majesty to commit to my care and trust, for Westminster Hall matters, three particulars: that of the *Rege inconsulto,* which concerneth Mr. Murray; that of the *Commendams,* which concerneth the Bishop of Lincoln; and that of *Habeas Corpora,* which concerneth Chancery. These causes, though I give them private additions, yet they are merely, or at least chiefly, yours; and the die runneth upon your royal prerogative diminution or entire conservation. Of these it is my duty to give your Majesty a short account.

For that of the *Rege inconsulto,* I argued the same in the King's Bench on Thursday last, being the 25th of this present. It was argued first on the other part by Mr. George Crooke, the Judge's brother, an able book-man, and one that was manned and armed forth with all the furniture that the bar could give him —(I will not say the Bench); and with the study of a long vacation. I was to answer, which hath somewhat of the extemporal. Of myself I will say nothing, but my argument was wholly upon book law and records, and that my voice served me well for two hours and a half; and yet as they tell me I lost not one auditor that was present in the beginning, but staid till

[1] Add. MSS. 5503. f. 81. b. The MS. has "1618"—obviously a mistake.

the latter end. It pleased my Lord Coke to say it was a famous argument. It pleased him also to ask me a politic and tempting question. For taking occasion by a notable precedent I had cited, where all the Judges of England had upon the like writ assembled themselves in the Exchequer Chamber, and there conferred privately for reverence sake, lest they should seem to dispute the King's commandment, he asked me whether I would have all the Judges called to this case. I was not caught; but knowing well that the Judges of the Common Pleas were most of all interessed, in respect of the Pronotaries, I answered civilly that I would advise of it, but that I did not distrust the Court, and thought the case so clear as it needed no general assembly of the Judges.

Here the copy in Bacon's collection ends. I fancy that, wishing to make some alteration, he began the letter again, wrote the whole fair, and despatched it,—keeping only the discarded beginning. For he had not yet made arrangements for having his letters regularly copied before they were sent off. It was not long before he found it necessary to do so: but at this time he seems to have generally contented himself with keeping the rough draft by way of memorandum. Making his fair copy always with his own hand, he naturally introduced alterations and additions as he went on; the character of which we have in this case the means of observing; for here is the letter as he sent it to the King.

TO THE KING'S MOST EXCELLENT MAJESTY.[1]

It may please your most excellent Majesty,

It pleased your Majesty to commit to my care and trust for Westminster-hall matters three particulars; that of the *Rege inconsulto*, which concerneth Mr. Murray; that of the *Commendams*, which concerneth the Bishop of Lincoln; and that of the *Habeas corpus*, which concerneth the Chancery. These causes, although I give them private additions, yet they are merely, or at least chiefly yours; and the die runneth upon your royal prerogative diminution or entire conservation. Of these it is my duty to give your Majesty a short account.

For that of the *Rege inconsulto*, I argued the same in the

[1] Balfour MSS.

King's bench on Thursday last. There argued on the other part Mr. George Crook, the Judge's brother; an able book-man, and one that was manned forth with all the furniture that the Bar could give him, (I will not say the Bench,) and with the study of a long vacation. I was to answer, which hath a mixture of the sudden; and of myself I will not nor cannot say any thing, but that my voice served me well for two hours and a half; and that those that understood nothing could tell me that I lost not one auditor that was present in the beginning, but staid till the later end. If I should say more, there were too many witnesses (for I never saw the court more full) that mought disprove me.

My Lord Cook was pleased to say, that it was a famous argument; but withal he asked me a politic and tempting question: for taking occasion by a notable precedent I had cited, where, upon the like writ brought, all the Judges of England assembled, and that privately, lest they should seem to dispute the King's commandment, and upon conference, with one mind agreed, that the writ must be obeyed: Upon this hold my Lord asked me, whether I would have all the rest of the Judges called to it. I was not caught: but knowing well that the Judges of the Common Pleas were most of all others interessed in respect of the prothonotaries, I answered civilly, that I would advise of it, but that I did not distrust the court; and besides, I thought the case so clear, as it needed not.

Sire, I do partly perceive, that I have not only stopped, but almost turned the stream; and I see how things cool by this, that the Judges that were wont to call so hotly upon the business, when they had heard me, of themselves, took a fortnights-day to advise what they will do; by which time the term will be near at an end; and I know they little expected to have the matter so beaten down with book-law, upon which my argument wholly went, so that every mean student was satisfied. Yet because the times are as they are, I could wish, in all humbleness, that your Majesty would remember and renew your former commandment which you gave my Lord Chief Justice in Michaelmas term; which was, that after he had heard your Attorney, (which now is done,) he should forbear further proceeding till he had spoken with your Majesty.

It concerneth your Majesty threefold: First, in this particular

of Murray; Next, in the consequence of fourteen several patents, part in Queen Elizabeth's time, some in your Majesty's time, which depend upon the like question; but chiefly, because this writ is a mean provided by the ancient law of England, to bring any case that may concern your Majesty in profit or power from the ordinary benches, to be tried and judged before your Chancellor of England, by the ordinary and legal part of his power. And your Majesty knoweth your Chancellor is ever a principal counsellor and instrument of monarchy, of immediate dependence upon the King: and therefore like to be a safe and tender guardian of the regal rights.

For the case of the Commendams, a matter likewise of great consequence, (though nothing near the first,) this day I was prepared to have argued it before all the Judges; but by reason of the sickness of the Serjeant which was provided to argue on the other side, although I pressed to have had some other day appointed this term, yet it pleased divers of the Judges to do me the honour as to say it was not fit any should argue against me upon so small time of warning; it is adjourned to the first Saturday next term.

For the matter of the *habeas corpus*, I perceive this common employment of my lord Chancellor and my lord Chief Justice in these examinations is such a *vinculum*, as they will not square while those matters are in hand, so that there is *altum silentium* of that matter. God ever preserve your Majesty.

Your Majesty's most humble
and bounden subject and servant,
FR. BACON.

27 of January 1615.

The next letter brings us back to the negotiation with the New Company; concerning which see above, Chapter V. § 5.

A LETTER TO THE KING, ADVISING HOW TO BREAK OFF WITH THE NEW COMPANY.[1]

It may please your most excellent Majesty,

I spake yesternight long with my Lord Coke; and for the *rege inconsulto* I conceive by him it will be an *amplius deliberan-*

[1] Gibson Papers, vol. viii. f. 23. Fair copy.

dum censeo (as I thought at first), so as for the present your Majesty shall not need to renew your commandment of stay.

I spake with him also about some propositions concerning your Majesty's casual revenue, wherein I found him to consent with me fully, assuming nevertheless that he had thought of them before. But it is one thing to have the vapour of a thought, another thing to digest business aright.

He on his part imparted to me divers things of great weight concerning the reparation of your Majesty's means and finances, which I heard gladly; insomuch as perceiving the same, I think he was the readier to open himself to me. In one circumstance, which he did much inculcate, I concur fully with him, that they are to be held secret. For I never saw but that business is like a child which is framed invisibly in the womb; and if it come forth too soon, it will be abortive. I know, in most of them, the prosecution must rest much upon myself. But I that had the power to prevail in the farmers' case of the French wines[1] without the help of my Lord Coke, shall be better able to go through these with his help, the ground being no less just. And this I shall ever add of mine own, that I shall ever respect your Majesty's honour no less than your profits; and shall also take care (according to my pensive manner) that that which is good for the present have not in it hidden seeds of future inconveniences.

The matter of the new company was referred to me by the lords of your council; wherein after some private speech with Sir Lionel Cranfield, I made that report which I held most agreeable to truth, and your Majesty's service. If this new company break, it must either be put upon the patent, or upon the orders made by themselves. For the patent, I satisfied the whole Board, that there was no tittle in it which was not either *verbatim* in the patent of the old company, or by special warrant from the table inserted; which my Lord Coke, with much respect to me, acknowledged, but disliked the old patent itself, and disclaimed his being present at the table when the additions were allowed. But in my opinion (howsoever my Lord Coke, to magnify his science of law, draweth every thing, though sometimes improperly and unseasonably, to that kind of question) it is not convenient to break the business upon those points. For

[1] See Vol. IV. p. 336.

considering that they are but clauses that were in the former patents, and in many other patents of companies, and that the additions likewise passed the allowance of the table, it will be but clamoured, and perhaps conceived, that to quarrel them now is but an occasion taken; and that the times are changed, rather than the matter. But that which preserveth intire your Majesty's honour, and the constancy of your proceedings, is to put the breach upon their orders.

For this light I gave in my report, which the table readily apprehended, and much approved; that if the table reject their orders as unlawful and unjust, it doth not free them from their contract: for whosoever contracteth or undertaketh any thing is always understood to perform it by lawful means; so as they have plainly abused the state, if that which they have undertaken be either impossible or unjust.

I am bold to present this consideration to the excellent faculty of your Majesty's own judgment; because I think it importeth that further good which may grow to your Majesty in the close of this business, that the falling off be without all exception. God have you in his precious custody.

Your Majesty's most humble
and bounden subject and servant,
FR. BACON.

Feb. 3, 1615.

In this case the King approved Bacon's advice and immediately acted upon it; as appears by the following letter from Winwood to Sir Thomas Lake, dated the 6th of February.

"For the matter of dyeing and dressing, I think my Lord Fenton will shortly be with you; with him you may confer at large what course is to be taken for his M. service. His M. this morning hath received a letter from the Attorney who doth justify the patent of the New Company; because the latter patent is in a manner the very same with the former, and was drawn by order from the Lords. His M. doth wish the new Company should break, if there be not found good possibility to proceed in the undertaking, rather upon the orders which they in their Court peculiarly have established, than that advantage should be taken upon the ground of the Patent. Howsoever, this dispute would have an end, and nothing can be more prejudicial to the service of the King and kingdom than this irresolution. Withal care is to be taken, which is the cause of my L. Fenton's coming, that the old merchants, if they be stablished, slip not their

necks out of the collar, but perform really what heretofore was promised by them to the increase of his M. revenew."[1]

7.

In the middle of these troubles the Lord Chancellor had another attack of illness—an attack so severe that it seemed likely to prove fatal. This could not but suggest the important question, who was to succeed him? a question in which Bacon had a personal as well as a public interest; though it seems that on second thoughts he determined to suppress all allusion to it for the present. I say on second thoughts: because in this case again we happen to have a copy of the first draft of the letter which he sent to the King on the occasion, as well as the letter itself, so that we may trace the change in his intention. The letter as it stood in his own collection is no doubt a transcript of the first copy, and runs thus:

A LETTER TO THE KING, TOUCHING THE LORD CHANCELLOR'S SICKNESS.[2]

It may please your most excellent Majesty,

I am glad to understand by Mr. Murray that your Majesty accepteth well of my poor endeavours in opening unto you the passages of your service, that business may come the less crude and the more prepared to your royal judgment; the perfection whereof, as I cannot expect they should satisfy in every particular, so I hope through my assiduity there will result a good total. My Lord Chancellor's sickness falleth out *duro tempore*. I have always known him a wise man, and of a just elevation for monarchy. But your Majesty's service must not be mortal. And if you leese him, as your Majesty hath now of late purchased many hearts by depressing the wicked, so God doth minister unto you a counterpart to do the like by raising the honest. God evermore preserve your Majesty.

Your Majesty's most humble subject
and devoted servant.

Feb. 9, 1615.

Before this was despatched, Bacon heard from Murray that the

[1] S. P. Dom. James I., vol. lxxxvi. no. 42.
[2] Add. MSS. 5503, f. 67.

King had himself written to the Lord Chancellor. This, it seems, induced him to rewrite (or at any rate in writing fair to alter) his letter in the latter part, and to substitute that which follows; which is the letter that went.

It may please your most exc. Ma.[1]

I am glad to understand by Mr. Murray that your M. accepteth well of my poor endeavours in opening unto your M. the passages of your service, that business may come the less crude and the better prepared to your royal judgment. The perfection whereof is such, as I cannot presume I shall be able to satisfy the same in every particular, but yet I hope thorough my assiduity I shall be able to give your M. an honest account of the total.

My L. Chancellor's sickness falleth out *duro tempore*. I have ever known him a wise man and of a just elevation for monarchy. I understand this afternoon by Mr. Murray that your M. hath written to him, and I can best witness how much that sovereign cordial wrought with him in his sickness this time twelvemonth, which sickness was not so much in his spirits as this is. I purpose to see my L. tomorrow, and then I will be bold to write to your M. what hope I have either of his continuance or of his return to business, that your M.'s service may be as little passive as can be by this accident. God have your M. in his precious custody.

Your M.'s most humble subject
and most bounden servant,
FR. BACON.

1615.[2]

The result of Bacon's observation of the Lord Chancellor's condition was unfavourable. He evidently thought that all was over, and that the place would be vacant immediately: whereupon (the consideration of a successor being a matter of too much importance to be postponed any longer out of delicacy) he proceeded to set forth to the King the conditions of the question, and the several courses among which he had to choose. The conclusion to which his statement was meant to lead was that he was himself the fittest man for the office; which I suppose was no more than he believed to be true.

[1] Add. MSS. 19,402, f. 105. Original: own hand.
[2] The part of the paper which contained the month-date is worn off.

I am not aware that there was at that time any professional etiquette which forbade him to mention his own name; and in advising the King to do that which he believed to be best for him he could not be violating any rule written in the nature of things. The fault therefore (if fault there was) must have been in the manner of doing it, not in the thing itself; and for the manner we must look to the terms of the letter which he wrote; a letter of which (however private and confidential at the time) he certainly did not wish to make a secret with posterity, seeing that he preserved a copy in his own collection,[1] which was meant for the benefit of posterity. It has indeed suffered a little hitherto from the well-meant manipulations of Tenison, which succeeding editors have not entirely removed, and which we have the means in this case of discriminating with certainty. But they affect only the style and taste in its literary aspect, and are now at last, I trust, completely eliminated. Wherever the copy in Tenison's *Baconiana* differs alike from the fair copy at Lambeth (being that which Bacon kept for himself), from the copy in the manuscript collection now in the British Museum (Add. 5503)—being a transcript of his own "register-book of letters," which he left to trustees for publication or preservation,—and from the copy in the *Cabala* (ed. 1663), where the letter was first printed, probably from the original which went to the King,—I conclude that the variation represents, not what Bacon wrote, but what Tenison thought he had better have written, and I have rejected it without scruple.

The copy which follows is taken from the Lambeth MS., which has Bacon's own docket upon it, and in the absence of the letter actually despatched must be accepted as the highest authority.

A Letter to the King touching the Lord Chancellor's place.[2]

It may please your most excellent Majesty,

Your worthy Chancellor, I fear, goes his last day. God hath hitherto used to weed out such servants as grew not fit for your Majesty. But now he hath gathered to himself a true sage, or *salvia*, out of your garden.[3] But your Majesty's service must not be mortal.

Upon this heavy accident I pray your Majesty in all humbleness and sincerity to give me leave to use a few words. I must

[1] Add. MSS. 5503 f. 67. [2] Gibson Papers, vol. viii. f. 24. Fair copy.
[3] So the three copies above mentioned. The copy in the *Baconiana* has "one of the choicer plants in your Majesty's garden."

never forget, when I moved your Majesty for the Attorney's place, it was your own sole act, more than that Somerset when he knew your Majesty had resolved it, thrust himself into the business for a fee:[1] and therefore I have no reason to pray to saints.

I shall now again make oblation to your Majesty, first of my heart, then of my service, thirdly of my place of attorney, which I think is honestly worth 6000*l.* *per annum*,[2] and fourthly of my place of the Star-Chamber,[3] which is worth 1600*l.* *per annum;* and with the favour and countenance of a Chancellor much more.

I hope I may be acquitted of presumption if I think of it, both because my father had the place, which is some civil inducement to my desire (and I pray God your Majesty may have twenty no worse years in your greatness, than Queen Elizabeth had in her model, after my father's placing), and chiefly because since the Chancellor's place went to the law, it[4] was ever conferred upon some of the learned counsel, and never upon a Judge. For Audeley was raised from King's serjeant; my father from attorney of the wards; Bromley from solicitor; Puckering from Queen's serjeant; Egerton from master of the rolls, having newly left the attorney's place.

Now I beseech your Majesty let me put you the present case truly. If you take my Lord Coke,[5] this will follow; first your Majesty shall put an over-ruling nature into an over-ruling place, which may breed an extreme; Next you shall blunt his industries in matter of your finances, which seemeth to aim at another place; And lastly, popular men are no sure mounters[6] for your Majesty's saddle. If you take my Lord Hubbard, you shall have a Judge at the upper end of your council board and another at the lower end, whereby your Majesty will find your prerogative pent; for though there should be emulation between them, yet as legists they will agree in magnifying that

[1] So the three copies. The *Baconiana* gives "that it was your own sole act and not my Lord of Somerset's, who when he knew your Majesty had resolved it, thrust himself into the business to gain thanks."

[2] This clause is omitted in the *Baconiana*.

[3] The rest of the sentence is omitted in the *Baconiana*.

[4] "Because the Chancellor's place, after it went to the law, was," etc.: *Baconiana*.

[5] After "Coke," there follow in the MS. the words "(who in my mouth I think the best choice)," with a line drawn through them.

[6] "Mountures" in MS.

wherein they are best. He is no statesman but an œconomist, wholly for himself; so as your Majesty, more than an outward form, will find little help in him for your business. If you take my Lord of Canterbury, I will say no more but the Chancellor's place requires an whole man; and to have both jurisdictions, spiritual and temporal, in that height, is fit but for a king.[1]

For myself, I can only present your Majesty with *gloria in obsequio:* yet I dare promise, that if I sit in that place your business shall not make such short turns upon you as it doth, but when a direction is once given, it shall be pursued and performed, and your Majesty shall only be troubled with the true care of a king, which is to think what you would have done in chief, and not how for the passages.

I do presume also, in respect of my father's memory, and that I have been always gracious in the lower house, I have some interest in the gentlemen of England, and shall be able to do some effect in rectifying that body of parliament-men,[2] which is *cardo rerum.* For let me tell your Majesty, that that part of the Chancellor's place, which is to judge in equity between party and party, that same *regnum judiciale* (which since my father's time is but too much enlarged) concerneth your Majesty least, more than the acquitting of your conscience for justice. But it is the other parts, of a moderator amongst your Council, of an overseer over your Judges, of a planter of fit justices and governors in the country, that importeth your affairs and these times most.

I will add also, that I hope by my care the inventive part of your Council will be strengthened, who now commonly do exercise rather their judgments than their inventions, and the inventive part cometh from projectors and private men, which cannot be so well; in which kind my Lord of Salisbury had a good method, if his ends had been upright.[3]

To conclude: if I were the man I would be, I should hope, that as your Majesty hath of late won hearts by depressing, you should in this leese no hearts by advancing: for I see your people can better skill of *concretum* than *abstractum,* and that the waves of their affections flow rather after persons than things:

[1] The whole of this paragraph is omitted in the *Baconiana.*
[2] "Parliament" in the *Baconiana.*
[3] The last clause omitted in the *Baconiana.*

so that acts of this nature (if this were one) do more good than twenty bills of grace.

If God call my Lord, the warrants and commissions which are requisite for the taking of the seal, and for the working with it, and for the reviving of warrants under his hand, which die with him, and the like, shall be in readiness. And in this time presseth more, because it is the end of a term, and almost the beginning of the circuits; so that the seal cannot stand still. But this may be done as heretofore by commission, till your Majesty hath resolved of an officer. God ever preserve your Majesty.

Your Majesty most humble subject
and bounden servant,
FR. BACON.

12th Feb. 1615.

I should not have thought it worth while to make any comment here, were it not that Lord Campbell appeals to this letter as containing evidence in itself that Bacon was really the meanest of mankind; and that too with the letter itself lying fairly before him and fairly laid before his readers. The reason he gives is that it is "something very like suing to be made a Judge and bargaining for a place of judicature,"—practices which Bacon had himself noted as disqualifying the suitor. *Something like* suing to be made a Judge no doubt it is: it is advising the King to make him Lord Chancellor. But it is also something very *un*like what Bacon meant when he denounced the practice: for it is really a piece of *advice* offered to the King in the King's own interest by a person whom he had encouraged and invited to advise. When Bacon said that he should for his own part "suspect" a man who sued to be made a Judge, he did not mean a man in the position of Attorney-General, or otherwise entitled to offer counsel in such matters; still less a man whose suit consisted in an appeal to the personal knowledge of his qualifications possessed by the patron himself, as proved in a long course of service. If all suits were urged on similar grounds and in a similar spirit to this, there would be no more harm in suing for a judicial office than for any other. And to say that it is "something like *bargaining* for a place of judicature" is not only to misapprehend, but absolutely to pervert and read in an opposite sense the nature of the proposal. What he *offers* for the place is only that which in accepting it he must necessarily relinquish. He could not keep the Attorney-Generalship and the Clerkship of the Star Chamber if he became Lord

Chancellor; and though he might perhaps have made something of them by selling the reversions beforehand, I suppose nobody will say that in offering to forego that right and give up his patents *gratis*, he was proposing anything in the nature of a corrupt bargain. His enumeration of the four "oblations" which he was going to make was in fact a warning that he was *not* going to make oblation of money.

Happily neither the King nor Villiers required any such propitiation, and he received a message in reply which amounted to a promise of the Chancellorship when it should be vacant; as I gather from the following letter, which comes also from his own collection. The heading is the docket, written in his own hand.

A LETTER TO SIR G. VILLIERS TOUCHING A MESSAGE BROUGHT TO HIM BY MR. SHUTE, OF A PROMISE OF THE CHANCELLOR'S PLACE.[1]

Sir,

The message which I received from you by Mr. Shute, hath bred in me such belief and confidence, as I will now wholly rely upon your excellent and happy self. When persons of greatness and quality begin speech with me of the matter, and offer me their good offices, I can but answer them civilly. But those things are but toys. I am yours surer to you than to my own life. For, as they speak of the Turquois stone in a ring, I will break into twenty pieces, before you have the least fall. God keep you ever.

Your truest servant.

xv^th^ of Feb. 1615. FR. BACON.

My Lord Chancellor is prettily amended. I was with him yesterday almost half an hour. He used me with wonderful tokens of kindness. We both wept, which I do not often.

8.

The Chancellor was in fact so much better, that it now seemed likely that he would overcome his disease completely, and live to take up arms once more in defence of his Court against a new aggression. For Coke,—whose elevation to the King's Bench and a

[1] Gibson Papers, vol. viii. f. 26; fair copy: own hand. Another copy in Add. MSS. 5503.

seat in the Privy Council, though it may have made his collisions with Prerogative less frequent, had not at all allayed his thirst for jurisdiction,—had lately found a clause in an old statute which, with a little straining, might be construed as forbidding all other Courts to meddle with any case which had been adjudicated in his own; and a case had just occurred which gave him an opportunity of putting it in force. A man against whom judgment had been obtained in the King's Bench by a fraudulent creditor, having applied in vain for a reversal of the judgment in the same Court, had carried the case into Chancery, and obtained there a decree in his favour, for non-execution of which the fraudulent creditor had been committed to prison. The case being again brought before the King's Bench upon a writ of *Habeas Corpus*, Coke decided that the decree and imprisonment, being after a judgment at common law, were unlawful, and that the Court ought to relieve the prisoner. And there the matter rested up to the 27th of January; when Bacon (as we have seen) informed the King that he heard no further speech of it, and that he thought the common employment of the Chancellor and Chief Justice in the business of Somerset would suspend the quarrel for the time. This however does not appear to have been the real history of the delay. Protection against imprisonment was not the only relief which the Court could offer to its client. The passing of the decree in Chancery was held by Coke to be an indictable offence: and though the case, being new, took some time in preparation, it was ready before the term ended. On the 12th of February (which was the last day of it) indictments of *præmunire* were preferred in the King's Bench against all the persons who had been concerned in the proceeding in Chancery,—the plaintiffs, the counsellors, the solicitors, and the clerks. They were preferred with Coke's full sanction and approbation, and only failed because he could not by instruction, authority, expostulation, or threats of committal—all of which he used to the full—induce the grand jury to find a true bill. And this was the state of the case when the three next letters were written; which with this introduction will be sufficiently intelligible.

A LETTER TO THE KING, OF MY LORD CHANCELLOR'S AMENDMENT, AND THE DIFFERENCE BEGUN BETWEEN THE CHANCERY AND KING'S BENCH.[1]

It may please your most excellent Majesty,

I do find (God be thanked) a sensible amendment in my

[1] Gibson Papers, vol. viii. f. 25; fair copy, with two or three corrections in Ba-'s hand. The heading is from Add. MSS. 5503.

Lord Chancellor: I was with him yesterday in private conference about half an hour, and this day again at such time as he did seal, which he endured well almost the space of an hour, though the vapour of wax be offensive to him. He is free from a fever, perfect in his powers of memory and speech, and not hollow in his voice nor look. He hath no panting or labouring respiration; neither are his coughs dry or weak. But whosoever thinketh his disease is but melancholy, he maketh no true judgment of it. For it is plainly a formed and deep cough, with a pectoral surcharge; so that at times he doth almost *animam agere*. I forbear to advertise your Majesty of the care I took to have commissions in readiness, because Mr. Secretary Lake hath let me understand he signified as much to your Majesty: but I hope there shall be no use of them for this time.

And as I am glad to advertise your Majesty of the amendment of your Chancellor's person, so I am sorry to accompany it with an advertisement of the sickness of your Chancery court, though (by the grace of God) that cure will be much easier than the other.

It is true I did lately write to your Majesty, that for the matter of the *Habeas corpora* (which was the third matter in law you had given me in charge,) I did think the communion of service between my Lord Chancellor and my Lord Chief Justice in the great business of examination, would so join them as they would not square at this time. But pardon me (I humbly pray your Majesty) if I have too reasonable thoughts.

And yet that which happened the last day of the term, concerning certain indictments in the nature of *præmunire*, preferred into the King's Bench, but not found, is not so much as is voiced abroad; (though I must say, it was *omni tempore nimium*, and *hoc tempore alienum*): and therefore I beseech your Majesty not to give any believing ear to reports, but to receive the truth from me that am your Attorney-general and ought to stand indifferent for jurisdictions of all courts; which account I cannot give your Majesty now, because I was then absent, and some are now absent, which are properly and authentically to inform me touching that which passed. Neither let this any ways disjoint your other business, for there is a time for all things, and this very accident may be turned to good. Not that

I am of opinion that that same cunning maxim of *Separa et impera*, which sometimes holdeth in persons, can well take place in jurisdictions, but because some good occasion by this excess may be taken to settle that which would have been more dangerous if it had gone on by little and little. God ever preserve your Majesty.

Your Majesty's most humble subject
and most bounden servant,
FR. BACON.

15 Feb. 1615.

A LETTER TO SIR G. VILLIERS TOUCHING THE DIFFERENCE BETWEEN THE COURT OF CHANCERY AND KING'S BENCH. 19 FEB. 1615.[1]

Sir,

I received this morning from you two letters by the same bearer, the one written before, the other after his Majesty had received my last.

In this difference between the two courts of Chancery and King's Bench (for so I had rather take it for this time, than between the persons of my Lord Chancellor and my Lord Chief Justice) I marvel not if rumour get way of true relation. For I know fame hath swift wings, specially that which hath black feathers. But within these two days (for sooner I cannot be ready) I will write unto his Majesty both the narrative truly, and my opinion sincerely; taking much comfort that I serve such a king as hath God's property in discerning truly of men's hearts.

I purpose to speak with my Lord Chancellor this day and so to exhibit that cordial of his Majesty's grace, as I hope this other accident will rather rouse and raise his spirits, than deject him or incline him to a relapse. Mean while I commend the wit of a mean man that said this other day, "Well (saith he) the next "term you shall have an old man come with a besom of worm-"wood in his hand, that will sweep away all this." For it is my Lord Chancellor's fashion, specially towards the summer, to carry a posy of wormwood. I write this letter in haste to re-

[1] Gibson Papers, vol. viii. f. 27; fair copy. The heading from docket in Bacon's hand.

turn your messenger with it. God keep you; and long and happily may you serve his Majesty.

Your true and affectionate servant,

FR. BACON.

19 Feb. 1615.

Sir, I humbly thank you for your inward letter; I have burned it as you commanded: but the flame it hath kindled in me will never be extinguished.[1]

LETTER TO THE KING'S MOST EXCELLENT MAJESTY, CONCERNING THE PRÆMUNIRE IN THE KING'S BENCH, AGAINST THE CHANCERY.[2] 21 FEBRUARY, 1615.

It may please your most excellent Majesty,

I was yesterday in the afternoon with my Lord Chancellor, (according to your commandment which I received by the Master of the Horse,) and find the old man well comforted both towards God and towards the world. And that same middle comfort, which is divine and human, proceeding from your Majesty, being God's lieutenant on earth, I am persuaded hath been a great cause that such a sickness hath been portable to such an age. I did not fail in my conjecture that this business of the Chancery hath stirred him. He sheweth to despise it, but he is full of it, and almost like a young duellist that findeth himself behind-hand.

I will now, as your Majesty requireth, give you a true relation of that which hath passed: neither will I decline your royal commandment for delivering my opinion also, though it be a tender subject to write on. But I that account my being but as an accident to my service, will neglect no duty upon self-safety.

First, it is necessary I let your Majesty know the ground of the difference between the two courts, that your Majesty may the better understand the narrative.

There was a statute made 27 Edw. III. cap. 1, which (no doubt) in the principal intention thereof was ordained against

[1] "This little piece above, being as a postscript, was written on a small piece of paper by itself and enclosed herein." (Note in MS.) Above it is written in Bacon's hand "Inclosed."

[2] Gibson Papers, vol. viii. f. 28. Copy with corrections in Bacon's hand.

those that sued to Rome, wherein there are words somewhat general against any *that questioneth or impeacheth any judgment given in the king's courts, or in any other court.* Upon these doubtful words, (*other courts,*) the controversy groweth. For the sounder interpretation taketh them to be meant of those courts, which though locally they were not held at Rome or where the Pope's chair was, but here within the realm, yet in their jurisdiction had their dependency upon the court of Rome; as were the court of the legate here, and the courts of the archbishops and bishops, which were then but subordinate judgment-seats to that high tribunal of Rome. And for this construction the opposition of the words (if they be well observed) between *the king's courts* and *other courts* maketh very much; for it importeth as if those other courts were not the king's courts. Also the main scope of the statute fortifieth the same; and lastly the practice of many ages. The other interpretation (which cleaveth to the letter) expoundeth *the king's courts* to be *the courts of law* only, and *other courts* to be *courts of equity,* as the Chancery, Exchequer-chamber, Dutchy, *etc.,* though this also flieth indeed from the letter, for that all these are the king's courts.

4° H. 4. cap. 23. There is also another statute which is but a simple prohibition, and not with a penalty of *præmunire* (as the other is), *That after judgments given in the king's courts, the parties shall be in peace, except the judgments be undone by Error or Attaint* (which is a legal form of reversal). And of this also I hold the sounder interpretation to be, to settle possessions against disturbances, and not to take away remedy in equity, where those judgments are obtained *ex rigore juris,* and against good conscience.

But upon these two statutes there hath been a late conceit in some, that if a judgment pass at the common law against any, that he may not after sue for relief in Chancery; and if he do, both he and his counsel and his solicitors, yea and the judge in equity himself, are within the danger of those statutes.

Here your Majesty hath the true state of the question, which I was necessarily to open to you first; because your Majesty calleth for this relation not as news, but as business. Now to the historical part.

It is the course of the King's Bench, that they give in charge to a grand jury offences of all natures to be presented, within

Middlesex, where the said court is; and the manner is, to enumerate them as it were in articles. This was done by Justice Crook, the Wednesday before the term ended; and that article (*If any man, after a judgment given, had drawn the said judgment to a new examination in any other court*) was by him specially given in charge, which had not used to be given in charge before: It is true it was not solemnly dwelt upon, but as it were thrown in amongst the rest.

The last day of the term (and that which all men condemn, the supposed last day of my Lord Chancellor's life) there were two indictments preferred of *præmunire*, for suing in chancery after judgment at common law; the one by Rich. Glanville, the other by William Allen: the former against Courtnay, the party in chancery, Gibb the counsellor, and Deurst the clerk; the latter against alderman Bowles and Humfrey Smith, parties in chancery, serjeant More the counsellor, Elias Wood solicitor in the cause, and Sir John Tindal, master of the chancery, and an assessor to my Lord Chancellor.

For the cases themselves, it were too long to trouble your Majesty with them, but this I will say; if they were set on that preferred them, they were the worst mark-men that ever were that set them on; for there could not have been chosen two such causes to the honour and advantage of the Chancery, for the justness of the decrees and the foulness and scandal both of fact and person in those that impeach the decrees.

The grand jury, consisting as it seemeth of very substantial and intelligent persons, would not find the bills, notwithstanding they were much clamoured by the parties, and twice sent back by the court; and in conclusion resolutely seventeen of nineteen found an *Ignoramus;* wherein for that time I think *Ignoramus* was wiser than those that know too much.

Your Majesty will pardon me, if I be sparing in delivering to you some other circumstances of aggravation and of concurrences of some like matters the same day, as if it had been some fatal constellation: They be not things so sufficiently tried as I dare put them into your ear.

For my opinion, I cannot but begin with this preface, that I am infinitely sorry that your Majesty is thus put to salve and cure not only accidents of time but errors of servants; for I account this a kind of sickness of my Lord Coke's, that comes

almost in as ill a time as the sickness of my Lord Chancellor. And as I think it was one of the wisest parts that ever he played when he went down to your Majesty to Royston, and desired to have my Lord Chancellor joined with him; so this was one of the weakest parts that ever he played, to make all the world perceive that my Lord Chancellor is severed from him at this time.

But for that which may concern your service, which is my end (leaving other men to their own ways), first, my opinion is plainly, that my Lord Coke at this time is not to be disgraced, both because he is so well habituate for that which remaineth of these capital causes, and also for that which I find is in his breast touching your finances and matters of repair of your estate. And (if I mought speak it) as I think it were good his hopes were at an end in some kind, so I could wish they were raised in some other.

On the other side, this great and public affront, not only to the reverend and well deserving person of your Chancellor (and at a time when he was thought to lie on dying, which was barbarous), but to your high court of Chancery, which is the court of your absolute power, may not (in my opinion) pass lightly, nor end only in some formal atonement; but use is to be made thereof for the settling of your authority and strengthening of your prerogative according to the true rules of monarchy.

Now to reconcile and accommodate these two advices, which seem almost opposite:

First, your Majesty may not see it (though I confess it be suspicious) that my Lord Coke was any way aforehand privy to that which was done, or that he did set it or animate it, but only took the matter as it came before him; and that his error was only that at such a time he did not divert it in some good manner.

Secondly, if it be true (as is reported) that any of the puisne judges did stir this business, or that they did openly revile and menace the jury for doing their conscience (as they did honestly and truly), I think that judge is worthy to leese his place. And to be plain with your Majesty, I do not think there is anything a greater *polychreston, ad multa utile* to your affairs, than upon a just and fit occasion to make some example against the presumption of a judge in causes that concern your Majesty, whereby the

whole body of those magistrates may be contained in better awe; and it may be this will light upon no unfit subject of a person that is rude and that no man cares for.

Thirdly, if there be no one so much in fault (which I cannot yet affirm either way, and there must be a just ground, God forbid else), yet I should think that the very presumption of going so far in so high a cause deserveth to have that done which was done in this very case upon the indictment of Serjeant Heale in Queen Elizabeth's time; that the Judges should answer it upon their knees before your Majesty or your Council, and receive a sharp admonition: at which time also my Lord Wray, being then Chief Justice, slipt the collar and was forborne.

Fourthly, for the persons themselves, Glanville and Allen, which are base fellows and turbulent, I think there will be discovered and proved against them (besides the preferring of the bills) such combinations and contemptuous speeches and behaviour, as there will be good ground to call them, and perhaps some of their petty counsellors at law, into the Star-chamber.

In all this which I have said your Majesty may be pleased to observe, that I do not engage you much in the main point of the jurisdiction, for which I have a great deal of reason, which I now forbear. But two things I wish to be done: The one, that your Majesty take this occasion to redouble unto all your Judges your ancient and true charge and rule, that you will endure no innovating the point of jurisdiction, but will have every court impaled within their own precedents, and not assume to themselves new powers upon conceits and inventions of law; The other, that in these high causes that touch upon State and Monarchy, your Majesty give them strait charge, that upon any occasions intervenient hereafter, they do not make the vulgar party to their contestations by public handling them, before they have consulted with your Majesty, to whom the reglement of those things only appertaineth.

To conclude, I am not without hope that your Majesty managing this business according to your great wisdom, unto which I acknowledge myself not to be worthy to be card-holder or a candle-holder, will make profit of this accident as a thing of God's sending.

Lastly, I may not forget to represent to your Majesty, that there is no thinking of arraignments until these things be some-

what accommodate, and some outward and superficial reconciliation at least made between my Lord Chancellor and my Lord Chief Justice; for this accident is a banquet to all Somerset's friends. But this is a thing that falleth out naturally of itself, in respect of the Judges going circuit, and my Lord Chancellor's infirmity with hope of recovery. And although this protraction of time may breed some doubt of mutability, yet I have lately learned out of an excellent letter of a certain king, That the sun sheweth sometimes watry to our eyes, but when the cloud is gone the sun is as before. God ever preserve your Majesty.

Your Majesty's most humble subject
and most bounden servant,
FR. BACON.

21 Feb. 1615.

Your Majesty's commandment speaketh for pardon of so long a letter, which yet I wish may have a short continuance and be punished with fire.

We shall see presently in what way this question was disposed of so as to secure the advantages which Bacon expected to reap from it. The case is remarkable as one in which Coke was in the wrong and posterity has not taken his part.

9.

The postscript to the last letter (which is taken from the original manuscript, though it has not been printed before) shows that Bacon was beginning to feel a little uneasy in his new position of confidential adviser of the King in matters properly belonging to the Council Table, without having a seat there. It is easy to understand that the position was both invidious and disadvantageous;—invidious, because he had to give opinions privately which affected the interests of others; disadvantageous, because he could not appear in person to maintain them. The proper and natural remedy was to make him a Privy Councillor. He had already spoken to Villiers on the subject, and represented to him how materially he would be strengthened thereby for his present course of service. But the apparent prospect of an immediate vacancy in the Chancellorship had suspended the project for the time; because if Bacon succeeded, the thing would come of itself. Now Ellesmere's unexpected recovery, promising to keep him in his present place for an indefinite period,

raised it into importance again and made it desirable to have the other measure despatched without further delay. He accordingly renewed his motion to Villiers in the following letter.

A LETTER TO SIR GEORGE VILLIERS, TOUCHING A MOTION TO SWEAR HIM COUNCILLOR.[1] FEBRUARY 21, 1615.

Sir,

My Lord Chancellor's health growing with the days, and his resignation being an incertainty, I would be glad you went on with my first motion, my swearing privy counsellor. This I desire not so much to make myself more sure of the other, and to put it past competition (for herein I rest wholly upon the King and your excellent self), but because I find hourly that I need this strength in his Majesty's service, both for my better warrant and satisfaction of my conscience that I deal not in things above my vocation, and for my better countenance and prevailing where his Majesty's service is under any pretext opposed, I would it were despatched. I remember a greater matter than this was despatched by a letter from Royston, which was the placing of the Archbishop that now is; and I imagine the King did it of purpose, that the act mought appear to be his own.

My Lord Chancellor told me yesterday in plain terms, that if the King would ask his opinion touching the person that he would commend to succeed him upon death or disability, he would name me for the fittest man. You may advise whether use may not be made of this offer.

I sent a pretty while since a paper to Mr. John Murray, which was indeed a little remembrance of some things past, concerning my honest and faithful services to his Majesty; not by way of boasting (from which I am far), but as tokens of my studying his service uprightly and carefully. If you be pleased to call for the paper, which is with Mr. John Murray, and to find a fit time that his Majesty may cast an eye upon it, I think it will do no hurt; and I have written to Mr. Murray to deliver the paper if you call for it. God keep you in all happiness.

Your truest servant.

[1] Add. MSS. 5503, no. 52, f. 45.

Of the paper concerning his own services here referred to, which would have been of great use to a biographer, I have not met with any traces; nor do we hear any more of it. But it is clear that at this time the value of his services was well understood by the King, and that Villiers (whose influence was increasing daily) was taking a lively and unselfish interest in his fortunes,—an interest founded apparently on genuine respect and admiration, and not expecting to be paid for in any kind of unworthy compliance. Nor had there been any time when the duties of his place were more according to his mind. In the contention between the Common Law and the Prerogative, which was the most important business then in hand,—and in which his conduct, whether excusable or not, is now commonly assumed to stand so much in need of excuse,—there can be no doubt, I think, that the side which was assigned to him by his office (for I suppose that even now an attorney-general is not expected to *oppose* the government which he serves) was the side which he believed to be right, and on which (had office and the hope of office and the wish for office been all alike out of the question) he would have ranged himself, simply as a disinterested statesman and patriot. Nor was the vindication of public justice in the case of the murder of Overbury a cause less after his own heart. As the case stood now it presented many difficulties, but the end which he had to aim at was the same which, for the good of the country and without consideration of any personal interest of his own, he wished to see attained. Assuming that his attachment to the Crown (which was his party) was of the same complexion as the attachment of a modern conservative to the conservative party, or a modern liberal to the liberal party, I do not find that in pursuing the best path towards the Chancellorship he was at this time called upon to take any step which his judgment did not approve or his conscience sanction.

The next letter brings us back to the proceedings of the new Company for dyeing and dressing cloth; and the two which follow explain themselves.

A LETTER OF ADVICE TO THE KING, UPON THE BREACH WITH THE NEW COMPANY.[1]

It may please your most excellent Majesty,

Your Privy Council have wisely and truly discerned of the orders and demand of the new company, that they are unlawful and unjust; and themselves have now acknowledged the work

[1] Gibson Papers, vol. viii. f. 29. Fair copy, corrected in Bacon's hand. Add. MSS. 5503, f. 70.

impossible without them, by their petition in writing now registered in the council book. So as this conclusion is (of their own making) become peremptory and final to themselves, and the impossibility being confessed, the practice and abuse is reserved to the judgment the state shall make of it.

This breach then of this great contract is wholly on their part, which could not have been if your Majesty had broken upon the patent; for the patent was your Majesty's act, the orders are their act; and in the former case they had not been liable to further question; now they are.

There resteth two things to be considered: The one, if they (like Proteus when he is hard held) shall yet again vary their shape; and shall quit their orders convinced of injustice, and lay their imposition only upon the trade of whites, whether your Majesty shall further expect. The other, if your Majesty dissolve them upon this breach on their part, what is further to be done for the setting of the trade again in joint, and for your own honour and profit. In both which points I will not presume to give opinion, but only to break the business for your Majesty's better judgment.

For the first, I am sorry the occasion was given (by my Lord Coke's speech at this time of the commitment of some of them) that they should seek *omnem movere lapidem* to help themselves. Better it had been, if (as my Lord Fenton said to me that morning very judiciously and with a great deal of foresight) that for that time they should have had a bridge made for them to be gone. But my Lord Coke floweth according to his own tides, and not according to the tides of business. The thing which my Lord Coke said was good, and too little; but at this time it was too much.

But that is past. Howsoever, (if they should go back and seek again to entertain your Majesty with new orders or offers, as is said to be intended,) your Majesty hath ready two answers of repulse, if it please your Majesty to use them.

The one, that this is now the fourth time that they have mainly broken with your Majesty, and contradicted themselves. First, they undertook to dye and dress all the cloths of the realm; soon after, they wound themselves into the trade of whites, and came down to the proportion contracted.[1]

[1] Add. MS. 5503 has "came down to the proper cloths from which they were to be barred."

Secondly, they ought to have performed that contract according to their subscription *pro rata*, without any of these orders and impositions. Soon after, they deserted their subscription, and had recourse to these devices of orders.

Thirdly, if by order and not by subscription, yet their orders should have laid it upon the whites, which is an unlawful and prohibited trade. Nevertheless they would have brought in lawful and settled trades, full manufactures, merchandise of all natures, poll-money or brotherhood-money, and I cannot tell what.

And now lastly it seemeth they would go back to lay it upon the whites. And therefore whether your Majesty will any more rest and build this great wheel of your kingdom upon these broken and brittle pins, and try experiments further upon the health and body of your state, I leave to your princely judgment.

The other answer of repulse is a kind of opposing them what they will do after the three years contracted for; which is a point hitherto not much stirred, though Sir Lionel Cranfield hath ever beaten upon it in his speech with me. For after the three years they are not tied otherwise than as trade shall give encouragement, of which encouragement your Majesty hath a bitter taste: and if they should hold on according to the third year's proportion, and not rise on by further gradation, your Majesty hath not your end. Nay I fear, and have long feared, that this feeding of the foreigner may be dangerous; for as we may think to hold up our clothing by vent of whites, till we can dye and dress: so they (I mean the Dutch,) will think to hold up their manufacture of dyeing and dressing upon our whites, till they can clothe. So as your Majesty hath the greatest reason in the world to make the new company to confirm and strengthen that part of their contract; and, they refusing (as it is confidently believed they will), to make their default more visible to all men.

For the second main part of your Majesty's consultation, that is, what shall be done supposing an absolute breach; I have had some speech with Mr. Secretary Lake, and likewise with Sir Lionel Cranfield; and, as I conceive, there may be three ways taken into consideration.

The first is, that the old company be restored, who, no doubt, are in appetite, and (as I find by Sir Lionel Cranfield) not un-

prepared; and that the two licences, the one, that of 30000 cloths, which was the old licence, the other that of my Lord of Cumberland's, which is without stint, (my Lord of Cumberland receiving satisfaction,) be compounded into one entire licence without stint; and then that they amongst themselves take order for that profit which hath been offered to your Majesty.

This is a plain and known way, wherein your Majesty is not an actor; only it hath this, that the work of dyeing and dressing cloths, which hath been so much glorified, seemeth to be wholly relinquished, if you leave there.

The second is, that there be a free trade of cloth, with this difference, that the dyed and dressed pay no custom, and the whites double custom (it being a merchandise prohibited and only licentiate). This continueth in life and fame the work desired, and will have a popular applause. But I do confess I did ever think that trading in companies is most agreeable to the English nature, which wanteth that same general vein of a republic which runneth in the Dutch and serveth to them instead of a company; and therefore I dare not advise to adventure this great trade of the kingdom (which hath been so long under government) in a free or loose trade.

The third is a compounded way of both, which is to go on with the trade of whites by the old company restored; and that your Majesty's profit be raised by order amongst themselves, rather than by double custom, (wherein you must be the actor); and that nevertheless there be added a privilege to the same company to carry out cloths dyed and dressed, custom-free; which will still continue as a glorious beam of your Majesty's royal design.

I hope and wish at least that this which I have written may be of some use to your Majesty, to settle by the advice of the Lords about you this great business. At the least it is the effect of my care and poor ability, which, if in me be any, I know is given me to no other end but faithfully to serve your Majesty. God ever preserve you.

Your Majesty's most humble subject
and bounden servant,
Fr. Bacon.

25 Feb. 1615.

A LETTER TO SIR GEORGE VILLIERS, TOUCHING A MOTION TO SWEAR HIM COUNCILLOR. FEBRUARY 27, 1615.[1]

Sir,

I humbly pray you not to think me over-hasty or much in appetite, if I put you in remembrance of my motion of strengthening me with the oath and trust of a privy councillor; not for my own strength, (for as to that, I thank God, I am armed within) but for the strength of my service. The times I submit to you, who know them best; but sure I am, there were never times which did more require a King's Attorney to be well armed, and (as I said once to you) to wear a gauntlet and not a glove. The arraignments, when they proceed; the contention between the Chancery and King's Bench; the great cause of the *Rege inconsulto*, which is so precious to the King's prerogative; divers other services which concern the King's revenue and the repair of his estate. Besides, I see it pleaseth his Majesty to accept well of my relations touching his business, which may seem a kind of interloping (as the merchants call it) for one that is no councillor. But I leave all to you, thinking myself infinitely bounden to you for your great favours, the beams whereof I see plainly reflect upon me even from others; so that now I have no greater ambition than this, that as the King sheweth himself to you the best master, so I mought be found your best servant. In which wish and vow I shall ever rest,

most devoted and affectionate to obey your commands.

TO THE KING, UPON SOME INTIMATION ABOUT THE CHANCELLOR'S PLACE.[2]

It may please your most excellent Majesty,

The last day when it pleased your Majesty to express yourself towards me in favour far above that I can deserve or could expect, I was surprised by the Prince's coming in. I most humbly pray your Majesty to accept these few lines of acknowledgment. I never had great thoughts for myself, further than to maintain those great thoughts which I confess I have for your service. I know what honour is, and I know what the times

[1] Add. MSS. 5503, f. 46.
[2] Gibson Papers, vol. viii. f. 30. Fair copy, corrected in Bacon's hand.

are. But I thank God with me my service is the principal, and it is far from me under honourable pretences to cover base desires; which I account them to be, when men refer too much to themselves, specially serving such a King. I am afraid of nothing but that the Master of the Horse, your excellent servant, and I shall fall out about this, who shall hold your stirrup best. But were you mounted and seated without difficulties and distastes in your business, as I desire and hope to see you, I should *ex animo* desire to spend the decline of my years in my studies: wherein also I should not forget to do him honour, who besides his active and politic virtues is the best pen of kings, much more the best subject of a pen. God ever preserve your Majesty.

Your Majesty's most humble subject,
and more and more obliged servant,
Fr. Bacon.

1 April, 1616.

CHAPTER VIII.

A.D. 1616. ÆTAT. 56.

1.

It will be remembered that the arraignment of the Somersets for the murder of Overbury, which seemed to be on the point of coming on in January, had been postponed till the arrival of Sir John Digby from Spain. The postponement seems to have been at the instance of Coke, who coming across a confidential despatch of Digby's which had got into Somerset's hands, and hastily inferring that it had been intercepted by him and the contents hidden from the King, scented high treason.[1] Digby arrived on the 21st of March,[2] and was immediately put into communication with Coke. An extract, for which we are indebted to Mr. Gardiner, from his letter to the King written after the interview, will explain the occasion of the proceedings reported in the next letter, and at the same time prepare us to find that nothing came of them.

Sir John Digby to the King. April 3, 1616.

. . . By the marginal notes of my Lord Chief Justice Coke upon the enclosed letter, which is the same I received from him, your M. will see in what particulars he desired to receive satisfaction, as judging he might make use of them in this business which he had now in hand, though indeed they have no relation to it; neither, as I conceived, can there any inference be drawn from them concerning it, since it now appeareth that my Lord of Somerset acquainted your Majesty with the despatch, and concealed not those businesses of consequence from you, as it seemeth my Lord Coke believed, when your Majesty commanded me to attend him, for (as I remember) he told me your Majesty had never seen that despatch.

I must confess unto your Majesty that I am of opinion that the coming of this letter unto my Lord Coke's hands hath been the cause of his aggra-

[1] See 'Notes for an Indictment' (drawn up by Coke). S. P. Dom. James I. Feb. (?) 1615-16.

[2] Sherburn to Carleton, March 23, 1615-16. S. P. Dom. James I.

vating matters very far; for he having there found mention made of the discovery of your Majesty's secrets, of great sums of money bestowed upon your Majesty's principal ministers, of Spanish pensioners, of the selling of my despatches, etc., either conjectured these things to have been absolutely held back from your Majesty, or else, lighting upon them in the prosecution of the business concerning my Lord of Somerset, made a wrong application of them to him, whereas the truth is they had only a reference to times past, and I had formerly at large made your Majesty acquainted with them, and so shall again my Lord Chancellor, as far as your Majesty shall think it fit for your service.

Of all that I am able to say unto your Majesty concerning my Lord of Somerset, both of his careless manner of keeping those papers and secrets committed unto him by your Majesty, as likewise his treating with the Spanish ambassador in the business of the marriage, both without your Majesty's privity, and clear in a contrary manner to that which your Majesty had signified unto me was your pleasure should be held, I have in my former despatches given unto your Majesty a full account. But hereunto it is likely much may be added by the light that may be gathered from Sir R. Cotton, if he may be examined concerning all the particulars in which he was employed by my Lord of Somerset to the Spanish Ambassador; both how far he therein used your Majesty's name, as likewise what hopes and promises were given for the effecting of the said match, and especially whether by my Lord of Somerset's directions he discovered not certain propositions and demands in point of religion, which in great secrecy I had sent unto your Majesty; as likewise, what other advertisement of mine he acquainted the Spanish ambassador withal.[1]

In consequence of this letter the King directed the Lord Chancellor and Bacon to confer with Digby as to the points on which Cotton should be examined; and a meeting took place accordingly on the 9th of April; of which the same evening Bacon sent the following report to Villiers:—

A Letter from the King's Attorney to Sir George Villiers, touching the examination of Sir Robert Cotton upon some information given by Sir John Digby.[2]

Sir,

I received your letter yesterday towards the evening, being the 8th of this present, together with the interrogatories included, which his Majesty hath framed, not only with a great deal of judgment what to interrogate, but in a wise and apt order. For I do find that the degrees of questions are of great efficacy in examination. I received also notice and direction by your letter, that Sir Robert Cotton was first throughly to be examined;

[1] Gardiner, vol. ii. p. 367.

[2] Add. MSS. 5503, f. 91.

which indeed was a thing most necessary to begin with; and that for that purpose Sir John Digby was to inform my Lord Chancellor of such points as he conceived to be material; and that I likewise should take a full account from my Lord Chief Justice of all Sir Robert Cotton's precedent examinations. It was my part then to take care, that that which his Majesty had so well directed and expressed should be accordingly performed without loss of time.

For which purpose, having soon after the receipt of your letter received a letter from my Lord Chancellor, that he appointed Sir John Digby to be with him at two o'clock in the afternoon as this day, and required my presence, I spent the meantime, being this afternoon,[1] in receiving the precedent examinations of Sir Robert Cotton from my Lord Chief Justice, and perusing of them; and accordingly attended my Lord Chancellor at the hour appointed, where I found Sir John Digby.

At this meeting it was the endeavour of my Lord Chancellor and myself to take such light from Sir John Digby as might conduce first to the examination of Sir Robert Cotton, and then to the main examination of Somerset. Wherein we found Sir John Digby ready and willing to discover unto us what he knew; and he had also (by the Lord Chancellor's direction) prepared some heads of examination in writing for Sir Robert Cotton; of all which use shall be made for his Majesty's service, as is fit. Howbeit, for so much as did concern the practice of conveying the Prince into Spain, or the Spanish pensions, he was somewhat reserved; upon this ground, that they were things his Majesty knew, and things which by some former commandment from his Majesty he was restrained to keep in silence, and that he conceived they could no ways be applied to Somerset. Wherefore it was not fit to press him beyond that which he conceived to be his warrant, before we had known his Majesty's further pleasure; which I pray you return unto us with all convenient speed. I for my part am in no appetite for secrets; but nevertheless seeing his Majesty's great trust towards me (wherein I shall never deceive him) and that I find the Chancellor of the same opinion, I do think it were good my Lord Chancellor chiefly and myself

[1] So in MS. The copy printed by Birch (which professes to be taken "from an old manuscript in his possession, entitled, *A Book of Letters of Sir Francis Bacon*") has "forenoon," which must apparently be the true reading.

were made acquainted with the persons and the particulars; not only because it may import his Majesty's service otherwise, but also because to my understanding (for therein I do not much rely upon Sir John Digby's judgment) it may have a great connexion with the examination of Somerset. For I am sure no man was liker to be a pensioner than Somerset, considering his mercenary nature, his great undertaking for Spain in the match, and his favour with his Majesty. And therefore the circumstances of other pensions given cannot but help to discover and examine whether he were a pensioner or no.

But herein no time is lost; for my Lord Chancellor, who is willing even beyond his strength to lose no moment for his Majesty's service, hath appointed me to attend him on Thursday morning for the examination of Sir Robert Cotton, leaving to-morrow for council-business to my Lord and to me for considering of fit articles for Sir Robert Cotton.

This letter has no date in the MS. In Birch's copy it is dated the 10th of April. But as the 10th of April was a Wednesday, and it speaks of the 8th as "yesterday," and of "to-morrow" as coming between Thursday and the day of writing, we may conclude that it was written on the 9th. The examination took place as appointed on Thursday the 11th, and on Saturday Bacon again wrote to report the result and ask for further instructions. Sir William Monson, whose name has not occurred before in connexion with this business, was an old pensioner of Spain, and had been referred to by Digby as the person who could give the best information as to any negotiations which the Spanish ambassador may have had with the Countess of Somerset.[1]

A LETTER FROM THE KING'S ATTORNEY TO SIR GEORGE VILLIERS, CONCERNING THE PROCEEDING WITH SOMERSET. 13° APR. 1616.[2]

Sir,

I thought it convenient to give his Majesty an account of that which his Majesty gave me in charge in general, reserving the particulars for his coming. And I find it necessary to know his pleasure in some things ere I could further proceed.

My Lord Chancellor and myself spent Thursday and yesterday, the whole forenoons of both days, in the examination of Sir

[1] Gardiner, vol. ii. p. 363.

[2] Add. MSS. 5503, f. 89.

Ro. Cotton; whom we find hitherto but empty, save only in the great point of the treaty with Spain.

This examination was taken before his Majesty's warrant came to Mr. Vice-Chamberlain for communicating unto us the secrets of the pensions. Which warrant I receiving yesterday morning being Friday, a meeting was appointed at my Lord Chancellor's in the evening after council. Upon which conference we find matter of further examination for Sir Robert Cotton, of some new articles whereupon to examine Somerset, and of entering into examination of Sir William Mounson.

Whereupon, first for Somerset, being now ready to proceed to examine him, we stay only upon the Duke of Lenox, who it seemeth is fallen sick and keepeth in, without whom we neither think it warranted by his Majesty's direction, nor agreeable to his intention, that we should proceed. For that will want, which should sweeten the cup of medicine, he being his countryman and friend. Herein then we humbly crave his Majesty's direction with all convenient speed, whether we shall expect the Duke's recovery, or proceed by ourselves; or that his Majesty will think of some other person (qualified according to his Majesty's first intention) to be joined with us. I remember we had speech with his Majesty of my Lord Hay, and I for my part can think of no other, except it should be my Lord Chancellor of Scotland, for my lord Binning may be thought too near allied.

I am further to know his Majesty's pleasure concerning the day. For my Lord Chancellor and I conceived his Majesty to have designed the Monday and Tuesday after St. George's feast; and nevertheless we conceived also, that his Majesty understood it that the examinations of Somerset about this, and otherwise touching the Spanish practices, should first be put to a point; which will not be possible, as time cometh on, by reason of this accident of the Duke's sickness, and the cause we find of Sir William Mounson's examination, and that divers of the Peers are to be sent for from remote places.

It may please his Majesty therefore to take into consideration, whether the days may not well be put off till Wednesday and Thursday after the term, which endeth on the Monday, being the Wednesday and Thursday before Whitsuntide; or if that please not his Majesty, (in respect it may be his Majesty will be then

in town, whereas these arraignments have been still in his Majesty's absence from town,) then to take Monday and Tuesday after Trinity Sunday, being the Monday and Tuesday[1] before Trinity term.

Now for Sir William Mounson, if it be his Majesty's pleasure that my Lord Chancellor and I shall proceed to the examination of him, (for of the Duke of Lenox differs[2] in that, there is not the like cause as in that of Somerset,) then his Majesty may be pleased to direct his commandment and warrant to my Lord Chief Justice to deliver unto me the examinations he took of Sir William Mounson, that those, joined to the information which we have received from Mr. Vice-Chamberlain,[3] may be full instructions unto us for his examination. Further, I pray let his Majesty know, that on Thursday in the evening my Lord Chief Justice and myself attended my Lord Chancellor at his house, for the settling of that scruple which his Majesty most justly conceived in the examination of the Lady Somerset; at which time, resting on his Majesty's opinion that that evidence, as it standeth now uncleared, must *secundum leges sanæ conscientiæ* be laid aside, the question was, whether we should leave it out, or try what a re-examination of my Lady Somerset would produce. Whereupon we agreed upon a re-examination of my Lady of Somerset, which my Lord Chief Justice and I have appointed for Monday morning. I was bold at that meeting to put my Lord Chief Justice a posing question; which was, whether that opinion which his brethren had given upon the whole evidence, and he had reported to his Majesty, viz. That it was good evidence, in their opinions, to convict[4] my lord of Somerset, was not grounded upon this part of the evidence now to be omitted, as well as upon the rest: who answered positively, that No; and they never saw the exposition of the letter, but only the letter.

The same Thursday evening, before we entered into this last matter, and in the presence of Mr. Secretary Winwood, (who left us when we went to the former business,) we had conference concerning the frauds and abusive grants passed to the prejudice

[1] The words from "after" to "Tuesday" (inclusive) are supplied from Stephens's copy.

[2] So both in the MS. and in Stephens: but there is evidently something wrong. Instead of "differs" we should probably read "presence," or some equivalent word. Stephens inserts "that" after "for," and puts the comma after "differs."

[3] Sir John Digby.

[4] "Convince" in MS.

of his Majesty's state of revenue; where my Lord Chief Justice made some relation of his collections which he had made of that kind; of which I will only say this, that I heard nothing that was new to me; and I found my Lord Chancellor in divers particulars more ready than I had found him. We grew to a distribution both of times and of matters. For we agreed what to begin with presently, and what should follow; and also we had consideration what was to be holpen by law, what by equity, and what by parliament. Wherein I must confess, that in the last of these (of which my Lord Chief Justice made most account) I make most doubt. But the conclusion was, That upon this entrance I should advise and confer at large with my Lord Chief Justice, and set things in work. The particulars I refer till his Majesty's coming.

The Learned Counsel have attended me now twice at my chamber, to confer upon that which his Majesty gave us in commandment for our opinion upon the case set down by my Lord Chancellor, whether the statutes extend to it. Whereupon we are more and more edified and confirmed that they do not, and shall shortly send our report to his Majesty.

Sir, I hope you will bear me witness I have not been idle; but all is nothing to the duty I owe his Majesty for his singular favours past and present; supplying all with love and prayers, I rest,

Your true friend and devoted servant.

The passage in the last paragraph but three of this letter, about the re-examination of my Lady Somerset, may require explanation.

While Overbury was in the Tower, the Countess (then Lady Essex) had written a letter to the Lieutenant, cautioning him as to the disposal of certain tarts, and one sentence ran thus: "If he should send this tart and jelly and wine to your wife, then you must take the tart from her, and the jelly, but the wine she may drink it if she will, for in that there are no letters, I know: but in the tart and jelly I know there is," etc. The word "letters" was known to be jargon for "poison." But who was "he"? If "he" was meant for Somerset (then Rochester), it was a strong piece of evidence against him: for it was good proof that the Countess at that time thought him likely to send tarts which she knew to be poisoned. But though Coke noted in the margin that "'He' is interpreted Rochester, for Rochester in truth sent it," there is nothing in the words or context that requires it to be interpreted so. "He" might

quite as well mean Overbury. It was thought expedient therefore to put the question to herself, and on the 8th of January, being examined concerning the letter, she made two confessions which seemed to settle the matter conclusively. She confessed first, that by those words 'If he should send, etc.,' "she meant the Earl of Somerset, for he used to send many tarts and jellies to him;" and secondly, "that by these words in her letter 'Do this at night and all shall be right' she meant that the tart and jellies then sent, wherein were poisons, should be given to Overbury that night, and then all should be well."[1] The letter thus interpreted formed a very important link in the chain of evidence, and Bacon was prepared to use it accordingly. But when the King came to examine the evidence for himself (which Coke had contrived—unfortunately in my opinion—to prevent him from doing during the first three months[2]) the interpretation of the first passage struck him as so improbable, that he referred the question again to the Commissioners for investigation. With what result we shall see as we go on.

The "case set down by my Lord Chancellor," which is alluded to in the penultimate paragraph, had reference to the dispute between the King's Bench and the Chancery; upon which Bacon with his fellows of the Learned Counsel were preparing an elaborate report —which will appear in its proper place.

The King's warrant for the delivery of Sir W. Monson's examinations was sent without delay and reached Bacon on Monday night, the 15th of April: whose first business the next morning was to write the following letter to Coke:—

To the R. Hon. etc. the Lord Chief Justice of the King's Bench.[3]

My Lord,

I received yesternight express commandment from his Ma-

[1] S. P. Dom. James I., vol. lxxxvi. no. 6, as quoted by Gardiner, vol. ii. p. 387.

[2] He appears to have invented a constitutional doctrine for the occasion: informing the King that if he insisted upon being "acquainted with any articles concerning blood"—meaning, I presume, articles of accusation in a capital case,—"before the party came to his public trial," he must resign his place. See 'Archæologia,' vol. xl. He did not however put the threat into execution. Perhaps it occurred to him that as the King was *not* to be judge and *was* to be prosecutor, it would be hard to explain why he should be kept in ignorance of the grounds of the prosecution. But it served in the meantime to keep all in his own hands till things had gone too far for reconsideration. "Whatever may be thought (says Mr. Gardiner) of the doctrine that the King had no right to know anything of the evidence in a case of blood, it is plain that Coke, knowing the King's extreme attachment to Somerset, was anxious even by inventing a little law on the spur of the moment to keep the investigation in the hands of the Commissioners." Ibid. vol. xli.

[3] S. P. Dom. James I., vol. lxxxvi. no. 135.

jesty to require from your Lordship in his Majesty's name all and every such examinations as are in your Lordship's hands of Sir Wi. Monson for his Majesty's present service: Therefore I pray your Lordship either send them presently sealed up by your servant, or if you think it needful I will come to you myself and receive them with mine own hands. I rest

Your Lordship's loving friend
to command
FR. BACON.

This Tuesday at 7 of
the clock in the morning
16 April 1616.

The next letter reports the result of an examination of Somerset himself concerning Spanish matters. It is addressed to Villiers.

A LETTER FROM THE KING'S ATTORNEY GIVING ACCOUNT OF AN EXAMINATION TAKEN OF SOMERSET IN THE TOWER. 18° APR. 1616.[1]

Sir,

I received from you a letter of very brief and clear directions, and I think it a great blessing of God upon me and my labours, that my directions come by so clear a conduit, as they receive no tincture in the passage.

Yesterday my Lord Chancellor, the Duke of Lenox, and myself, spent the whole afternoon at the Tower, in examination of Somerset upon the articles sent from his Majesty, and some other additionals, which were in effect contained in the former, but extended to more particularity, by occasion of somewhat discovered by Cotton's examination and Mr. Vice-Chamberlain's information.

He is full of protestations, and would fain keep that quarter towards Spain clear: using but this for argument, that he had such fortunes from his Majesty, as he could not think of bettering his conditions from Spain, because as he said he was no military man. He cometh nothing so far on (for that which concerneth the treaty) as Cotton, which doth much aggravate suspicion against him. The further particulars I reserve to his Majesty's coming.

[1] Add. MSS. 5503, f. 87. b.

In the end, *tanquam obiter*, but very effectually, my Lord Chancellor put him in mind of the state he stood in for the impoisonment; but he was little moved with it, and pretended carelessness of life, since ignominy had made him unfit for his Majesty's service. I am of opinion that the fair usage of him, as it was fit for the Spanish examinations, and for the questions touching the papers and dispatches, and all that, so it was no good preparative to make him descend into himself touching his present danger. And therefore my Lord Chancellor and myself thought not good to insist upon it at this time.

I have received from my Lord Chief Justice the examination of Sir William Mounson; with whom we mean to proceed to furder examination with all speed.

My Lord Chief Justice is altered touching the re-examination of the Lady, and desired me that we might stay till he spake with his Majesty, saying it could be no casting-back to the business; which I did approve.

Myself with the rest of my fellows, upon due and mature advice, perfected our report touching the Chancery. For the receiving whereof, I pray you put his Majesty in mind at his coming to appoint some time for us to wait upon him all together, for the delivery in of the same, as we did in our former certificate.

For the revenue matters, I reserve them to his Majesty's coming; and in the mean time I doubt not but Mr. Secretary Winwood will make some kind of report thereof to his Majesty.

For the conclusion of your letter concerning my own comfort, I can say but the Psalm of *Quid retribuam?* God that giveth me favour in his Majesty's eyes, will strengthen me in his Majesty's service. I ever rest

Your true and devoted servant.

To requite your postscript of excuse for scribbling, I pray you excuse that the paper is not gilt, I writing from Westminster-Hall, where we are not so fine.

2.

This appears to have been the end of the inquiry into Somerset's

relations with Spain. He was not, and had never been, a pensioner; and though he had had private dealings with the ambassador about matters of state, which at another time might perhaps have exposed him to a censure in the Star Chamber for contempt, they had nothing to do with the present charge, and were not fit to be mixed up with it. This interruption being removed, it was now time to prepare for the arraignment with as little delay as might be. But Coke being now no longer the sole manager of the prosecution,[1] had leisure for other activities; and though no man could more earnestly desire the triumph of justice in the shape of a verdict of guilty against the persons accused, he saw no harm in preluding the trial with another public exhibition of the want of harmony between the Crown and the Judges. A living had been granted by the King to one of the Bishops *in commendam*, to be held along with the bishoprick. But the right of presentation had been disputed, and the claimants of the right had brought an action against the Bishop. The case being new and important had been adjourned into the Exchequer Chamber, to be heard before all the Judges assembled, and was to have come on in Hilary Term, when Bacon was prepared to argue. Owing however to the illness of one of the counsel on the other side, it had been put off till the first Saturday in the next Term, which was the 20th of April, on which day it seems that Bacon was heard, though no report of his argument has been preserved. Now there being two grounds upon which such an action might be sustained,—informality in this particular grant, or incapacity in the Crown to grant Commendams at all,—the King, wishing to know how much was at issue, directed one of the Bishops who was of the Privy Council to attend the court and report to him the state of the question. It appeared upon his report that the dispute turned distinctly upon the extent of the ordinary Prerogative of the Crown, of which the doctrines maintained by the counsel imported a material curtailment. Whereupon the King directed Bacon to signify his pleasure to Coke that the day appointed for the Judges to deliver their arguments (which was Saturday the 27th) should be put off until he had had an opportunity of consulting with them. Bacon's letter to that effect was delivered on Thursday the 25th of April. But the Judges, resolving that it was contrary to law and that their oath bound them to disregard it, proceeded to their arguments on the day appointed notwithstanding.

[1] "On Wednesday last and this day the L. Chancellor, the D. of Lenox and the Attorney-General have been at the Tower to examine the L. of Somerset, not contenting themselves with what the L. Coke had done before, who meddles no more since he delivered his papers and examinations to the Attorney to draw the process and inform thereupon." Chamberlain to Carleton, 20 April 1616.

It is not necessary to print the letter here, though this is its chronological place, because it will appear presently in a full account of the whole case, in form of an act of Council. But this was the state of the question when the next letter was written, which, though undated, cannot well be placed later than the 27th of April,—that being the date of the Judges' letter to the King, which it is evident that Bacon had not seen or heard of when he wrote.

A LETTER FROM THE KING'S ATTORNEY TO THE KING GIVING SOME ACCOUNT TOUCHING THE COMMENDAMS.[1]

May it please your most excellent Majesty,

I am not swift to deliver anything to your Majesty before it be well weighed. But now that I have informed myself of as much as is necessary touching this proceeding of the Judges to the argument of the Commendams (notwithstanding your Majesty's pleasure signified by me upon your Majesty's commandment in presence of my Lord Chancellor and the Bishop of Winchester to the contrary), I do think it fit to advertise your Majesty what hath passed, the rather because I suppose the Judges, since they perform not your commandment, have at least given your Majesty their reasons of their failing therein; I being to answer for the doing your Majesty's commandment, and they for the not doing.

I did conceive that in a cause that concerned your Majesty and your royal power, the Judges having heard your Attorney-general argue the Saturday before, would of themselves have taken further time to be advised.

And (if I fail not in memory) my Lord Coke received from your Majesty's self, as I take it, a precedent commandment in Hilary term, That both in the *Rege inconsulto*, and in the Commendams, your Attorney should be heard to speak, and then stay to be made of further proceeding, till my Lord had spoken with your Majesty.

Nevertheless, hearing that the day appointed for the Judges' argument held, contrary to my expectation, I sent on Thursday in the evening (having received your Majesty's commandment but the day before in the afternoon) a letter to my Lord Coke; whereby I let him know, that upon report of my Lord of Winchester (who by your commandment was present at my ar-

[1] Add. MSS. 5503, f. 92. b.

gument) of that which passed, it was your Majesty's express pleasure, that no furder proceeding should be, until your Majesty had conferred with your Judges: which your Majesty thought to have done at your being now last in town; but by reason of your many and weighty occasions, your princely times would not serve; and that it was your pleasure he should signify so much to the rest of the Judges, whereof his Lordship mought not fail. His answer by word to my man was, That it were good the rest of the Judges understood so much from myself. Whereupon I (that cannot skill of[1] scruples in matter of service) did write on Friday three several letters of like content to the Judges of the Common Pleas, and the Barons of the Exchequer, and the other three Judges of the King's Bench, mentioning in that last my particular letter to my Lord Chief Justice.

This was all I did, and thought all had been sure; in so much as the same day being appointed in Chancery for your Majesty's great cause (followed by my lord Hunsdon), I writ two other letters to both the Chief Justices, to put them in mind of assisting my Lord Chancellor at the hearing. And when my Lord Chancellor himself took some notice upon that occasion, openly in the Chancery, that the Commendams could not hold, presently after I heard the Judges were gone about the Commendams, which I thought at first had been only to adjourn the court. But I heard after that they proceeded to argument.

In this their doing, I conceive they must either except to the nature of the commandment, or to the credence thereof; both which I assure myself your Majesty will maintain.

For if they should stand upon the general ground, *Nulli negabimus, nulli differemus justitiam*, it receiveth two answers. The one, that reasonable and mature advice may not be confounded with delay; and that they can well alledge when it pleaseth them. The other is, that there is a great difference between a case merely between subject and subject, and where the King's interest is in question directly or by consequence. As for the Attorney's place and commission, it is as proper for him to signify the King's pleasure to his Judges, as for the Secretary to signify the same to the privy-council; and so it hath ever been.

These things were a little strange, if there came not so many

[1] "In" in MS.

of them together, as the one maketh the other seem less strange. But your Majesty hath fair occasions to remedy all with small aid. I say no more for the present.

I was a little plain with my Lord Coke in these matters, and when his answer was, that he knew all these things, I said he could never profit too much in knowing himself and his duty.

3.

We shall now be able to follow the prosecution of the Somersets to the end without further interruption. The task of the Government had become very difficult and delicate in consequence of the premature announcement of the Earl's complicity before the fact, as a thing proved and established. For on the one hand the evidence, though affording a strong *presumption* that he was guilty, was not altogether conclusive; and on the other hand the great popular excitement and expectation, stimulated and sanctioned as it had been by the man who had best means of knowing and was held to be the highest authority, might easily have dangerous consequences, if it should be disappointed either by the withdrawal of the prosecution or even by a verdict of acquittal. Already the people were watching with jealousy the delay of the trial of those who were really the principals, and remembering the words of Weston when he hoped that the great flies would not be let through while the small ones were caught. If the prosecution of Somerset had been dropped, it would certainly have been considered a defrauding of justice from fear or favour of the person; and even if he had been tried and acquitted, the danger would scarcely have been less: for it would have been regarded as an acquittal of a Lord by Lords,—a Lord notoriously guilty of a crime for which his suborned agents, being commoners, had been hanged. If these conditions of the case (for which neither the King nor Bacon were in any degree answerable) be duly kept in mind, the course of the consultations as preserved in the following letters will be easily intelligible.

First comes a general survey of all the chances, with consideration how to meet each.

A LETTER OF THE KING'S ATTORNEY RETURNED WITH POSTILS OF THE KING'S OWN HAND. 28 APRIL 1616.[1]

It may please your most excellent Majesty,

Your Majesty hath put upon me a work of providence in

[1] Cambridge University Library MSS. Dd. 3. 63. Original: own hand. Ad-

this great cause, which is to break and distinguish future events into present cases; and so to present them to your royal judgment, that in this action which hath been carried for your Majesty's part with so great prudence, justice, and clemency, there may be (for that which remaineth) as little surprise as is possible; but that things duly foreseen may have their remedies and directions in readiness. Wherein I cannot forget what the poet Martial saith; *O! quantum est casibus ingenium!* signifying that accident is many times more subtle than foresight, and overreacheth expectation: and besides I know very well the meanness of mine own judgment, in comprehending or forecasting what may follow.

It was your Majesty's pleasure also, that I should couple these suppositions with my opinion, in every of them, which is a harder task. But yet your Majesty's commandment requireth my obedience, and your trust giveth me assurance.

I will first put the case which I wish; that Somerset should make a clear confession of his offence, before he be produced to his trial.

I saye with Apollo, Media tutius itur, *if it maye stande with lawe; and if it cannot, quhen I shall heare that he confessith, I ame then to make choyce of the first or the last.*

In this case it seemeth your Majesty will have a new consult; the points whereof will be (1) Whether your Majesty will stay the trial, and so save them both, from the stage and that public ignominy. Or (2) Whether you will (or may fitly by law) have the trial proceed, and stay or reprieve the judgment, which save[1] the lands from forfeiture, and the blood from corruption. Or (3) Whether you will have both trial and judgment proceed, and save the blood only, not from corrupting, but from spilling.

These be the depths of your Majesty's mercy which I may not enter into; but for honor and reputation they have these grounds.

That the blood of Overbury is already revenged by divers executions.

dressed To the King's most Excellent Majesty. Docketed in Bacon's hand "My letter returned with the K.'s postiles."

[1] So MS.: perhaps he meant to write "would save."

That confession and penitency are the foot-stools of mercy; adding this circumstance likewise, that the former offenders did (none of them) make a clear confession.

That the great downfall of so great persons carrieth in itself a heavy punishment, and a kind of civil death, although their lives should not be taken.

All which may satisfy honor, for sparing their lives.

But if your Majesty's mercy should extend to the first degree, which is the highest, of sparing the stage and the trial; then three things are to be considered.

This article cannot be mendit in any pointe thereof.

First, that they make such a submission or deprecation, as they prostrate themselves and all that they have at your Majesty's feet, imploring your mercy.

Secondly, that your Majesty in your own wisdom do advise what course you will take, for the utter extinguishing of all hope of resuscitating of their fortunes and favours; whereof if there should be the least conceit, it will leave in men a great deal of envy and discontent.

And lastly, whether your Majesty will not suffer it to be thought abroad, that there is cause of furder examination of Somerset concerning matters of estate, after he shall begin once to be a confessant; and so make as well a politic ground, as a ground of clemency, for furder stay.

As for the second degree of proceeding to trial and staying judgment, I must better in-

form myself by precedents and advise with my Lord Chancellor.

The second case is, if that fall out which is likest (as things stand) and which we expect; which is, that the Lady confess, and that Somerset himself plead not guilty, and be found guilty.

In this case, first I suppose your Majesty will not think of any stay of judgment, but that the public process of justice pass on.

Secondly, For your mercy to be extended to both, for pardon of their execution, I have partly touched in the considerations applied to the former case. Whereunto may be added, that as there is ground of mercy for her upon her penitency and free confession, and will be much more upon his finding guilty (because the malice on his part will be thought to be the deeper source of the offence), so there will be ground for mercy on his part upon the nature of the proof; because it resteth chiefly upon presumptions. For certainly there may be an evidence so balanced, as it may have sufficient matter for the consciences of the Peers to convict him, and yet leave sufficient matter in the conscience of a King upon the same evidence to pardon his life; because the Peers are astringed by necessity either to acquit or condemn; but grace is free: and for my part I think the evidence in this present case will be of such a nature.

If staye of judgment can stande with the lawe, I wold even wishe it in this cace; in all the reste, this article cannot be mendit.

Thirdly, it shall be my care so to moderate the manner of charging him, as it make him not odious beyond the extent of mercy.

That danger is well to be forseene, leaste he upon the one pairt comit unpardonable errouris, and

Lastly, all these points of mercy and favour are to be understood with this limitation; if he do not by his contemptuous and insolent carriage at

I upon the other pairt seeme to punishe him in the spirit of revenge.

The third case is, if he should stand mute, and will not plead, whereof your Majesty knoweth there hath been some secret question.

This article cannot be amendit.

The fourth case is that which I would be very sorry should happen; but it is a future contingent; That is, if the Peers should acquit him and find him not guilty.

This is so also.

the bar, make himself uncapable and unworthy of them.

In this case I should think fit, that, as in public both myself and chiefly my Lord Chancellor (sitting then as Lord Steward of England) should dehort and deter him from that desperation; So nevertheless that as much should be done for him, as was done for Weston; which was to adjourn the Court for some days, upon a Christian ground, that he may have time to turn from that mind of destroying himself; during which time your Majesty's furder pleasure may be known.

In this case the Lord Steward must be provided what to do. For as it hath been never seen (as I conceive it) that there should be any rejecting of the verdict, or any respiting of the judgment of the acquittal; so on the other side this case requireth that because there be many high and heinous offences (though not capital) for which he may be questioned in the star-chamber or otherwise, that there be some touch of that in general at the conclusion by the Lord Steward of England; and that therefore he be remanded to the Tower, as close prisoner.

For matter of examination, or other proceeding, my Lord Chancellor with my advice hath set down,

To morrow, being Monday, for the re-examination of the lady.

Wednesday next for the meeting of the Judges concerning the evidence.

Thursday for the examination of Somerset

himself, according to your Majesty's instructions.

Which three parts when they shall be performed, I will give your Majesty advertisement with speed, and in the meantime would be glad to receive from your Majesty (whom it is my part only to inform truly) such directions or significations of your pleasure as this advertisement may induce, and that with speed, because the time cometh on.

Well remembering who is the third person, whom your Majesty admitted to this secret, I have sent this letter open unto him, that he may take your Majesty's times to report it, or show it unto you: assuring myself that nothing is more firm than his trust, tied to your Majesty's commandments.

Your Majesty's most humble
and most bounden subject and servant,
FR. BACON.

28 of April, Sunday at noon,
1616.

These marginal notes in which the King gave his opinion upon the several cases as put by Bacon appear to have been accompanied with a letter (probably from Villiers) in which the expediency was suggested of letting Somerset in some way understand that it would be better for him, if guilty, to make a confession. That he *was* guilty, though it may appear doubtful now, was not doubted then by anybody; but how far it could be *proved* that he was guilty, was a point which might be very well doubted even by those who were most convinced in their own minds of the fact. Nor could it be regarded as a matter of indifference. Justice as administered in Government prosecutions had not acquired authority enough in popular opinion to overrule strong popular prejudices, and in the still excited condition of the public mind an acquittal would have caused serious discontent. The public declarations of the Earl's guilt having been so strong, while the proofs appeared on inspection to be in some respects so weak, the result of a trial was a matter of just anxiety; and certainly if he could by any fair means be induced to remove the difficulty by a confession, it would have been the best thing that could happen. But what inducement had Somerset to confess, if ever so guilty? Suppose him to have been privy to the murder before it was done: still he knew that, having kept so carefully out of the way, the evidence to connect him with it could not be much or direct. He knew therefore that he had two chances of escape. The

King—either upon some misgiving as to the force of the evidence, or some fear of meddling with so powerful a man, or some remnant of affection for one who had so lately and so long been his bosom-friend—might shrink from bringing him to trial. And again, if brought to trial he might be acquitted. Upon what motive should he throw away two such chances of escape? The only motive that could be presented to him was a hope that if he voluntarily confessed his guilt, he would have a better chance of mercy than if he stood upon his innocence and were found guilty upon the evidence. Now there can be no doubt that this was true. There can be no doubt that the King would really have been glad of an excuse for using his prerogative of mercy, and that he believed (as in those days most people did) that a clear, voluntary, and penitent confession furnished such an excuse. Could nothing be done then to inspire Somerset with such a hope? Of course a direct and explicit promise was not to be thought of; because a direct promise of pardon if he confessed would have seemed like a bargain and a bribe to purchase the confession. Upon such terms an innocent man, if appearances were against him, might think it prudent to confess himself guilty. But it occurred to the King that when the time came near such a hope might be put into his head by some friend who, though speaking without authority, might seem to speak from knowledge. That some suggestion to this effect accompanied the letter returned with the King's marginalia, appears from Bacon's next.

A LETTER FROM THE KING'S ATTORNEY TO SIR GEORGE VILLIERS, TOUCHING THE PROCEEDING WITH SOMERSET. 2° Maii 1616.[1]

Sir,

I have received my letter from his Majesty with his marginal notes, which shall be my directions, being glad to perceive I understand his Majesty so well. That same little charm which may be secretly infused into Somerset's ear some few hours before his trial, was excellently well thought of by his Majesty; and I do approve it both for matter and time; only if it seem good to his Majesty, I would wish it a little enlarged. For if it be no more but to spare his blood, he hath a kind of proud humour which may overwork the medicine. Therefore I could wish it were made a little stronger, by giving him some

[1] Add. MSS. 5503, f. 83. b.

hope that his Majesty will be good to his lady and child; and that time (when justice and his Majesty's honour is once saved and satisfied) may produce further fruit of his Majesty's compassion: which was to be seen in the example of Southampton, whom his Majesty after attainder restored; and Cobham and Gray, to whom his Majesty (notwithstanding they were offenders against his own person) yet spared their lives. And for Gray, his Majesty gave him back some part of his estate, and was upon point to deliver him.[1] Much more he, having been so highly in his Majesty's favour, may hope well, if he hurt not himself by his public misdemeanor.

For the person that should deliver this message, I am not so well seen in the region of his friends, as to be able to make choice of a particular. My Lord Treasurer, the Lord Knowles, or any of his nearest friends, should not be trusted with it, for they may go too far, and perhaps work contrary to his Majesty's ends. Those which occur to me, are my Lord Hay, my Lord Burleigh (of England I mean), and Sir Robert Carre.

My Lady Somerset hath been re-examined, and his Majesty is found both a true prophet and a most just king in that scruple he made; for now she expoundeth the word *He*, that should send the tarts to Helwisse's wife, to be of Overbury, and not of Somerset.[2] But for the person that should bid her, she saith it was Northampton or Weston, not pitching upon certainty, which giveth some advantage to the evidence.

Yesterday being Wednesday, I spent four or five hours with the Judges, whom his Majesty designed to take consideration with the four Judges of the King's Bench, of the evidence against Somerset. They all concur in opinion, that the questioning him, and drawing him on to trial is most honourable and just, and that the evidence is fair and good.

His Majesty's letter to the Judges concerning the *Commendams* was full of magnanimity and wisdom.[3] I perceive his Majesty is never less alone than when he is alone; for I am sure there was nobody by him to inform him; which made me admire it the more.

The Judges have given day over, till the second Saturday of

[1] There is no stop after "deliver him" in the MS. But it is clear that the sentence was meant to end there.

[2] See above, p. 268.

[3] This was his reply to the Judge's letter in which they gave their reasons for not putting off the argument. It will appear *in extenso* in the Act of Council.

the next term; so as that matter may endure further consideration, for his Majesty not only to lose[1] ground, but to win ground.

To-morrow is appointed for the examination of Somerset, which by some infirmity of the Duke of Lenox was put off from this day. When this is done, I will write more fully, ever resting,

Your true and devoted servant,

Fr. Bacon.

We have here another illustration, and a very good one, of the relation at this time subsisting between the Government and the Judges in cases of public prosecution. They were *advised with*. Before the case was brought into Court the evidence for the prosecution was laid before them, and their opinions were asked whether it was a case fit to proceed with. For though it may seem that to a government instituting a prosecution for the simple purpose of *trying* whether a man be guilty or not guilty, the verdict should be a matter of indifference, and accepted, which ever way it goes, simply as an answer to the question asked, it was certainly not so regarded in James's time. Even in the case before us, which is the strongest imaginable,—a case in which the Government had literally nothing to gain or lose except reputation for justice,—it is evident that an acquittal was feared less as a failure of justice than as a dishonour to the King. And how (it may be fairly asked) should an acquittal in such a case have been a dishonour to the King? The King's favourite falls under heavy suspicion of having been accessary to the murder of one of the King's subjects. He is formally accused and tried before a jury of his peers. His peers acquit him. What, it may be asked, is that to the King? We often hear *juries* blamed for verdicts of not guilty: but who ever thought of blaming the Crown? The answer, I think, must be that in the relation which once subsisted between the King and the people, such a feeling was natural and appropriate; and that, though that relation was now materially changed, the old feeling still remained,—an anomaly frequently observable in the course of social alterations, which seldom proceed all together; but either the opinion runs ahead of the practice, or the practice of the opinion. Originally the punishment of all crimes rested with the King alone. Judges were at first only deputies; juries were at first only witnesses. In process of time

[1] So in MS. A negative (either "not" after "only," or "no" before "ground") has evidently dropped out.

they came to be regarded as *checks* upon the King: The Judges were to see that the laws were not infringed; the juries to see that the fact was proved. But still the King was the accuser, and to accuse a man who was not guilty was false accusation. We can still understand that the acquittal of a man prosecuted for a *political* offence is a damage to the government that prosecutes him; and I fancy that in James's time a similar feeling extended to all prosecutions instituted at the suit of the Crown. The conviction seemed necessary in order to justify the prosecution; for an acquittal implied that the prisoner had been brought to trial on insufficient evidence. People had not yet learned to regard the proceeding before the Court simply as a *trial* of the question,—a reference of it to the Judge and Jury to know whether the prisoner was guilty or not. Still less had they learned to regard a prejudication of that question as unjust and injurious, on the ground that until the case had been openly heard nobody could know. The Government, having privately examined both the witnesses and the prisoner, were supposed to have already satisfied themselves of his guilt; and the trial was looked on as little more than an appeal to an open tribunal for confirmation of the judgment. Certainly from Coke's doctrine that the evidence against the prisoner ought to be so conclusive as to preclude the possibility of an answer,[1] it would directly and logically follow that a verdict of 'not guilty was a censure upon the King. This at any rate is certain—that in those days when a man was once brought up for trial the honour of the King was supposed to be interested in obtaining a conviction: and therefore it was found to be expedient, *before* bringing him up for trial, to ascertain upon the best authority which could be got that the prosecution was "honourable and just" and the evidence "fair and good."

The trial of the Countess had now been fixed for the 15th of May, and on the 5th Bacon sent the King an outline of the case as he proposed to have it presented to the Court. It would seem from the beginning of the letter which he sent with it, that the King had objected to his suggestion concerning the communication to be made to Somerset, as holding out a hope not only that his life might be spared, but that his fortune and favour might be recovered: which last he felt to be out of the question: a scruple very creditable to the King, though any friend of Somerset's who knew the King's nature might nevertheless have suggested the hope to him with a safe conscience.

[1] See above, Chapter IV. § 6.

A LETTER OF THE KING'S ATTORNEY TO SIR GEORGE VILLIERS, OF ACCOUNT AND ADVICE TO HIS MAJESTY TOUCHING SOMERSET'S ARRAIGNMENT. 5° MAII. 1616.[1]

Sir,

I am far enough from opinion that the re-integration or resuscitation of Somerset's fortune can ever stand with his Majesty's honour or safety; and therein I think I expressed myself fully to his Majesty in one of my former letters;[2] and I know well any expectation or thought abroad will do much hurt. But yet the glimmering of that which the King hath done to others by way of talk to him cannot hurt as I conceive; but I would not have that part of the message as from the King, but added by the messenger as from himself. This I remit to his Majesty's princely judgment.

For the person, though he trust the Lieutenant[3] well, yet it must be some new man; for in these cases, that which is ordinary worketh not so great impression as that which is new and extraordinary.

The time I wish to be the Tuesday, being the even of his Lady's arraignment. For, as his Majesty first conceived, I would not have it stay in his stomach too long, lest it sour in the digestion; and to be too near the time may be thought but to tune him for that day.

I send herewithal the substance of that which I purpose to say, nakedly, and only in that part which is of tenderness; for that I conceive was his Majesty's meaning.

It will be necessary, because I have distributed parts to the two serjeants (as that paper doth express), and they understand nothing of his Majesty's pleasure of the manner of carrying the evidence, more than they may guess by observation of my example (which they may ascribe as much to my nature as to direction), therefore that his Majesty will be pleased to write some few words to us all, signed with his own hand, that the matter itself being tragical enough, bitterness and insulting be forborne, and that we remember our part to be to make him delinquent to the Peers, and not odious to the people. That part of the evidence of the Lady's exposition of the pronoun (*He*), which was first caught hold of by me, and after by his Majesty's singular

[1] Add. MSS. 5503, f. 82. [2] See above, p. 277. [3] Sir George More,

wisdom and conscience excepted to, and now is by her re-examination retracted,[1] I have given order to serjeant Montague (within whose part it falleth) to leave it out of the evidence.

I do yet crave pardon, if I do not certify touching the point of law for respiting the judgment,[2] for I have not fully advised with my Lord Chancellor concerning it. But I will advertise it in time.

I send his Majesty the Lord Steward's commission in two several instruments, the one to remain with my Lord Chancellor, which is that which is written in secretary-hand for his warrant, and is to pass the signet; the other, that whereunto the great seal is to be affixed, which is in chancery-hand. His Majesty is to sign them both, and to transmit the former to the signet, if the Secretaries either of them be there; and both are to be returned to me with all speed. I ever rest

Your true and devoted servant.

SOMERSET'S BUSINESS AND CHARGE, WITH THE KING'S POSTILES.[3]

The heads of the charge.

Apostyle of the King.

Ye will doe well to remember lykewayes in your præamble, that insigne, that the only zeal to justice makis me take this course. I have commandit you not to expatiate nor digresse upon any other points, that maye not serve clearlie for probation or inducement of that pointe quhairof he is accused.

First, it is not meant that Somerset shall be charged with anything by way of aggravation otherwise than as conduceth to the proof of the impoisonment.

For the proofs themselves, they are distributed into four heads.

1. The first to prove the malice which Somerset bare to Overbury, which was the motive and ground of the impoisonment.

2. The second is to prove the preparations unto the impoisonment by plotting his imprisonment, placing his keepers, stopping access of friends, etc.

3. The third is the acts of the impoisonments themselves.

4. And the fourth is acts subsequent, which do vehemently argue him to be guilty of the impoisonment.

[1] "Extracted" in MS.

[2] See above, p. 277.

[3] Tenison MSS. 933 f. 125. The original letter.

For the first two heads (upon conference, whereunto I called serjeant Montagu and serjeant Crew), I have taken them two heads to myself; the third I have allotted to serjeant Montagu; and the fourth to serjeant Crew.

In the first of these, to my understanding, is the only tenderness. For on the one side it is most necessary to lay a foundation, that the malice was a deep malice, mixed with fear, and not only matter of revenge upon his La: quarrel.[1] For *periculum periculo vincitur;* and the malice must have a proportion to the effect of it, which was the impoisonment. So that if this foundation be not laid all the evidence is weakened.

On the other side, if I charge him, or could charge him, by way of aggravation, with matters tending to disloyalty or treason, then he is like to grow desperate.

Therefore I shall now set down perspicuously what course I mean to hold, that your Majesty may be pleased to direct and correct it, preserving the strength of the evidence; and this I shall now do, but shortly and without ornament.

First, I shall read some passages of Overbury's letters, namely these: "Is this the fruit of nine years' love, common secrets, and common dangers?" In another letter; "Do not drive me to extremity to do that which you and I shall be sorry for." In another letter; "Can you forget him, between whom such secrets of all kinds have passed? etc."

Then will I produce Simcock, who deposeth from Weston's speech, that Somerset told Weston that *if ever Overbury came out of prison one of them must die for it.*

Then I will say that what these secrets were, I mean not to enter into particulars; nor to charge him with disloyalty, because he stands to be tried for his life upon another crime. But yet by some taste that I shall give to the Peers in general, they may conceive of what nature those secrets may be.

Wherein I will take it for a thing notorious that Overbury was a man that always carried himself insolently both towards the Queen and towards the late Prince: That he was a man that carried Somerset on in courses separate and opposite to the privy council: That he was a man of nature fit to be an incendiary of a state, full of bitterness and wildness of speech and project: That he was thought absolutely to govern Somerset,

[1] So in MS. Birch printed it "his Lordship's quarrel." But "his Lady's quarrel" is evidently the true reading.

insomuch as in his own letters he vaunts, that *From him proceeded Somerset's fortune, credit, and understanding.*

This course I mean to run in a kind of generality, putting the imputations rather upon Overbury than Somerset, and applying it that such a nature was like to hatch dangerous secrets and practices.

I mean to shew likewise what jargons there were and cyphers between them, which are great badges of secrets of estate, and used either by princes and their ministers of state, or by such as practise against princes. That your Majesty was called *Julius* in respect of your empire, the queen *Agrippina* (though Somerset now saith it was *Livia*, and that my lady of Suffolk was *Agrippina*); the bishop of Canterbury *Unctius;* Northampton, *Dominic;* Suffolk, first *Lerma*, after *Wolsey;* and many others; so as it appears they made a play both of your court and kingdom, and that their imaginations wrought upon the greatest men and matters.

Neither will I omit Somerset's breach of trust to your Majesty in trusting Overbury with all the despatches, things wherewith your council of estate itself was not many times privy or acquainted; and yet this man must be admitted to them, not cursorily, or by glimpses, but to have them by him, to copy them, to register them, to table them, etc.

I shall also give in evidence, in this place, the slight account of that letter which was brought to Somerset by Ashton, being found in the fields soon after the late Prince's death, and was directed to Antwerp, containing these words, "'that the first branch was cut from the tree, and that he should ere long send happier and joyfuller news."

Apostyle of the King.

This evidence cannot be gevin in without making me his accuser, and that upon a verrie slight grounde.

As for all the subsequent evidencis, thaye are all so litle evident as una litura *may serve thaime all.*

Which is a matter I would not use, but that my Lord Coke, (who hath filled this part with many frivolous things) would think all lost, except he hear somewhat of this kind. But this it is to come to the leavings of a business.

And for the rest of that kind, as to speak of that particular,

Nothing to Somerset, and declared by Franklin after condemnation.	That Mrs. Turner did at Whitehall shew to Franklin the man, who (as she said) poisoned the prince, which he says was a physician with a red beard.
Nothing to Somerset, and a loose conjecture.	That there was a little picture of a young man in white wax, left by Mrs. Turner with Forman the conjurer (which my Lord Coke doubts was the Prince).
No better than a gazette or passage of Gallo-Belgicus.	That the viceroy of the Indies at Goa reported to an English factor, that Prince Henry came to an untimely death by a mistress of his.
Nothing yet proved against Lowbell.	That Somerset, with others, would have preferred Lowbell the apothecary to Prince Charles.
Nothing to Somerset.	That the Countess laboured Forman and Gresham, the conjurers, to inforce the Queen by witchcraft to favour the Countess.
Declared by Franklin after condemnation.	That the Countess told Franklin that when the Queen died, Somerset should have Somerset-house.
Nothing to Somerset.	That Northampton said the Prince, if ever he came to reign, would prove a tyrant.
Nothing to Somerset.	That Franklin was moved by the Countess to go to the Palsgrave, and should be furnished with money.

The particular reasons why I omit them I have set in the margent; but the general is partly to do a kind of right to justice, and such a solemn trial, in not giving that in evidence which touches not the delinquent or is not of weight; and partly to observe your Majesty's direction to give Somerset no just occasion of despair or flashes.

But I pray your Majesty to pardon me, that I have troubled you with repeating them, lest you should hear hereafter that Mr. Attorney hath omitted divers material parts of the evidence.

Along with the notes in the margin of this letter, Bacon received news that a messenger had already been despatched to try the effect of the King's charm upon Somerset's ear. It was earlier than he would himself have recommended, and may have helped to encourage Somerset in the belief that the King after all would not venture to bring him to trial. But it was too late to interpose any objection.

LETTER TO SIR GEORGE VILLIERS, 10 MAII, 1616.[1]

Sir,

Your man made good haste, for he was with me yesterday about ten of the clock the forenoon; since I held him.

The reason why I set so small a distance of time between the use of the little charm, or as his Majesty better terms it the evangile, and the day of his trial, notwithstanding his Majesty's being so far off as advertisement of success and order thereupon could not go and come between; was chiefly for that his Majesty, from whom the overture of that first moved, did write but of a few hours that this should be done, which I turned into days: Secondly, because the hope I had of effect by that mean, was rather of attempring him at his arraignment, than of confession before his arraignment. But I submit it to his Majesty's better judgment.

The person, by your first description which was without name, I thought had been meant of Packer: but now I perceive it is another, to me unknown, but, as it seemeth, very fit. I doubt not but he came with sufficient warrant to Mr. Lieutenant to have access. In this I have no more to do but to expect to hear from his Majesty how this worketh.

The letter from his Majesty to myself and the serjeants, I have received; such as I wished; and I will speak with the Commissioners, that he may by the Lieutenant understand his Majesty's care of him, and the tokens herein of his Majesty's compassion towards him.

I ever had a purpose to make use of that circumstance, that Overbury (the person murdered) was his Majesty's prisoner in the Tower; which indeed is a strong pressure of his Majesty's justice; For Overbury is the first prisoner murdered in the Tower, since the murder of the young princes by Richard the third, the tyrant.

[1] Gibson Papers, vol. viii. f. 32. Copy.

I would not trouble his Majesty with any points of preamble, nor of the evidence itself, more than that part nakedly wherein was the tenderness, in which I am glad his Majesty by his postils which he returned to me, approveth my judgment.

Now I am warranted, I will not stick to say openly that I am commanded not to exasperate nor to aggravate the matter in question of the impoisonment with any other collateral charge of disloyalty or otherwise; wherein, besides his Majesty's principal intention, there will be some use to save the former bruits of Spanish matters.

There is a direction given to Mr. Lieutenant by my Lord Chancellor and myself, that as yesterday Mr. Whiting the preacher, a discreet man, and one that was used to Helwisse, should preach before the Lady, and teach her, and move her generally to a clear confession, that after the same preacher should speak as much to her at his going away in private: and so proof to be made, whether this good mean and the last night's thoughts will produce any thing. And that this day the Lieutenant should declare to her the time of her trial and likewise of his trial, and persuade her, not only upon Christian duty, but as good for them both, that she deal clearly touching him, whereof no use can be made nor need to be made for evidence, but much use may be made for their comfort.

It is thought at the day of her trial, the Lady will confess the indictment; which if she do, no evidence ought to be given. But because it shall not be a dumb shew, and for his Majesty's honour in so solemn an assembly, I purpose to make a declaration of the proceedings of this great work of justice from the beginning to the end; wherein, nevertheless, I will be careful no ways to prevent or deflower the evidence of the next day.

In this my Lord Chancellor and I have likewise used a point of providence: for I did forecast, that if in that narrative, by the connexion of things, any thing should be spoken that should shew him guilty, she might break forth into passionate protestations for his clearing; which, though it may be justly made light of, yet it is better avoided; Therefore my Lord Chancellor and I have devised, that upon the entrance into that declaration she shall, in respect of her weakness, and not to add further affliction, be withdrawn.

It is impossible, neither is it needful for me, to express all

the particulars of my care in this business. But I divide myself into all cogitations as far as I can foresee; being very glad to find that his Majesty doth not only accept well of my care and advices, but that he applieth his directions so fitly, as guideth me from time to time.

I have received the commissions signed.

I am not forgetful of the goods and state of Somerset, as far as is seasonable to inquire at this time. My Lord Coke taketh upon him to answer for the jewels (being the chief part of his moveable value); and this, I think, is done with his Majesty's privity; But my Lord Coke is a good man to answer for it.

God ever preserve and prosper you. I rest

Your true and devoted servant,

10 Maii, Friday at 7 of the clock the morning.

The King's charm or "evangile" was tried upon Somerset on the 9th by a private messenger whose name is not given, and reinforced on the 13th[1] by Sir George More; who was authorized to assure him that "if he would yet before his trial confess clearly unto the Commissioners his guiltiness of this fact," the King would "not only perform what he promised by his last messenger both towards him and his wife, but would enlarge it, according to the phrase of the civil law, *quod gratiæ sunt ampliandæ*." And I suppose it was shortly after the delivery of the last message that the Commissioners made a communication to him somewhat to the same effect; of which the following undated letter gives the report.

A LETTER FROM THE KING'S ATTORNEY AND SOME GREAT LORDS COMMISSIONERS CONCERNING THE PERSUASION USED TO THE LORD OF SOMERSET TO A FRANK CONFESSION.[2]

It may please your Majesty,

We have done our best endeavours to perform your Majesty's commission, both in matter and manner, for the examination of my Lord of Somerset; wherein that which passed, for the general, was to this effect; That he was to know his own case, for that his day of trial could not be far off; but that this day's work was that which would conduce to your Majesty's justice little or nothing, but to your mercy much, if he did lay hold upon

[1] Losely MSS. p. 400. [2] Add. MSS. 5503, f. 94. b.

it; and therefore might do him good, but could do him no hurt. For as for your justice, there had been taken great and grave opinion, not only of such Judges as he may think violent, but of the saddest and most temperate of the kingdom, who ought to understand the state of the proofs, that the evidence was full to convict him, so as there needed neither confession nor supply of examination. But for your Majesty's mercy (although he were not to expect we should make any promise), we did assure him that your Majesty was compassionate of him if he gave you some good ground whereon to work. That as long as he stood upon his innocency and trial, your Majesty was tied in honour to proceed according to justice; and that he little understood (being a close prisoner) how much the expectation of the world, besides your love to justice itself, engaged your Majesty, whatsoever your inclination were. But nevertheless that frank and clear confession might open the gate of mercy, and help to satisfy the point of honour. That his Lady (as he knew), and that after many oaths and imprecations to the contrary, had nevertheless in the end been touched with remorse and confessed. That she that led him to offend, might lead him likewise to repent of his offence. That the confession of one of them could not fitly do either of them much good, but the confession of both of them might work some further effect towards both. And therefore, in conclusion, we wished him not to shut the gate of your Majesty's mercy against himself, by being obdurate any longer. This was the effect of that which was spoken, part by one of us, part by another, as it fell out; adding further, that he might well discern who spake in us in the course we held; for that commissioners for examination might not presume so far of themselves.

Not to trouble your Majesty with circumstances of his answers, the sequel was no other, but that we found him still not to come any de[gree further] on to confess; only his behaviour was very sober, and modest, and mild (differing apparently from other times), but yet, as it seemed, resolved to expect his trial.

Then did we proceed to examine him upon divers questions touching the empoisonment, which indeed were very material and supplemental to the former evidence; wherein either his affirmatives gave some light, [or] his negatives do greatly falsify him in that which is apparently proved.

We made this further observation; that when we asked him

some question that did touch the Prince or some foreign practice (which we did very sparingly at this time), yet he grew a little stirred, but in the questions of the empoisonment very cold and modest. Thus not thinking it necessary to trouble your Majesty with any further particulars, we end with prayer to God ever to preserve your Majesty.

Your Majesty's most loyal and faithful servant, etc.

If it seem good unto your Majesty, we think it not amiss some preacher (well chosen) had access to my Lord of Somerset for his preparing and comfort, although it be before his trial.

The suggestion of these hopes to Somerset may have done some of the good which Bacon anticipated, in "attempering him at his arraignment;" but of "confession before arraignment," which was the King's object, there was as yet no offer or symptom. The truth, I think, was that he did not yet believe that he would be arraigned at all; nor had he yet exhausted the resources which he thought he possessed in the well-known weaknesses of the King. He had tried many ways to work upon him. He began when first called in question with vehement upbraiding, against which he knew that James's soft and sensitive nature was seldom proof. When that failed, he tried to excite in him dislike and distrust of the Commissioners.[1] Failing again in that, he addressed himself to his political anxieties and apprehensions, intimating that he had an important state secret to communicate. Being told to communicate it to the Commissioners, he refused: it was no business (he said) of theirs: he would tell it to Lord Knolles and Lord Hay if he might see them. This device was partly successful. With difficulty, and after considerable delay, he succeeded in getting a communication passed to the King without the intervention of the Commissioners; and the long lull which followed,—while Digby was expected from Spain, while the dispute between the Chancery and the King's Bench was at its height, and while the inquiry was diverted towards Spanish intrigues, a region in which he had nothing serious to fear,—may have deceived him into the hope that he had shaken the King's resolution; a hope which the King's undisguised anxiety to obtain a confession before trial would naturally confirm. Finding however by the last interview with the Commissioners that it was not so, and that unless he could find some new means of diverting the King from his purpose he would really be brought to the bar, he next tried to work upon

[1] See the King's letter after the appointment of the Commissioners. 'Archæologia,' vol. xli. p. 90.

his personal timidity. Having got no good by his offer to impart information which it concerned him to possess, he now threatened to disclose something which it concerned him to keep secret. The particulars of the message are not known, but it seemed to import a threat that if brought to trial he would publicly charge the King with being himself accessary to the murder—a threat by which he hoped no doubt to deter him from proceeding further. Again however he was disappointed. The King, though alarmed and agitated, was not to be frightened from his purpose, but caused him to be informed that until he had either undergone his trial or confessed his crime, no private communication could pass between them.[1]

In the meantime counsel was taken, as we learn from the following memorial in Bacon's handwriting,—undated, but written certainly not less than three days before the trial,—what should be done in case he put his threat in execution.

MEMORIAL TOUCHING THE COURSE TO BE HELD IN MY LORD OF SOMERSET'S ARRAIGNMENT.[2]

Questions legal for the Judges.

Whether the axe is to be carried before the prisoner, being in the case of felony.

Whether, if the La. make any digression to clear his L., she is not by the L. Steward to be interrupted and silenced.

Whether, if my Lord of Somerset should break forth into any speech of taxing the King, he be not presently by the Lord Steward to be interrupted and silenced, and if he persist he be not to be told that if he take that course he is to be withdrawn, and evidence to be given in his absence; and whether that may be; and what else to be done.

Whether if there should be xii votes to condemn, and xiii or xiiii to acquit, it be not a verdict for the King?

Questions of convenience, whereupon his M. may confer with some of his Counsel.

Whether if Somerset confess at any time before his trial, his Majesty shall stay trial in respect of further examination concerning practice of treason, as the death of the late Prince, the conveying into Spain of the now Prince, or the like. For till he

[1] Losely Papers, p. 403.

[2] Tenison MSS. 941, f. 113. This is the docket, which is in Meautys's hand; all but the first word, which is in Bacon's. The paper itself is all in Bacon's hand.

confess the less crime, there is [no[1]] likelihood of confessing the greater.

Whether if the trial upon that reason shall be put off, it shall be discharged privately by dissolving the commission, or discharging the summons, or whether it shall not be done in open court, the Peers being met and the solemnity and celebrity preserved, and that with some declaration of the cause of putting off the further proceeding.

Whether the days of her trial and his shall be immediate, as it is now appointed; or a day between, to see if after condemnation the La. will confess of the L.; which done, there is no doubt but he will confess of himself.

Whether his trial shall not be set first and hers after, because then any conceit which may be wrought by her clearing of him may be prevented, and it may be he will be in the better temper, hoping of his own clearing, and of her respiting.

What shall be the days; for Thursday and Friday can hardly hold in respect of the summons; and it may be as well Friday and Saturday, or Monday and Tuesday, (as London makes it already.)

A particular remembrance for his M.

It were good that after he is comen into the Hall (so that he may perceive he must go to trial), and shall be retired into the place appointed till the court call for him, then the Lieutenant should tell him roundly that if in his speeches he shall tax the King, that the justice of England is that he shall be taken away, and the evidence shall go on without him, and all the people will cry *away with him*, and then it shall not be in the King's will to save his life, the people will be so set on fire.

As this was written before some Thursday, and the trial of the Countess actually took place on Friday the 24th of May, it follows that Wednesday the 22nd of May is the very latest date that can be assigned to it. It may have been earlier; not only because Thursday need not have been the next day, but also because the day of the trial was put off more than once after being fixed, and the Thursday spoken of may have belonged to another week: but it cannot have been later. From which it follows that the occasion of Sir George More's midnight visit to the King at Greenwich the night before

[1] Om. MS.

Somerset's trial, of which Weldon tells so picturesque a story, cannot have been this threat of "taxing the King;" for of that, as we see, he was aware some time before, and prepared for it. If there is any truth in that story, it must have had reference to another threat of a different kind; which will be noticed presently.

4.

The Lady's turn came first. At nine o'clock in the morning of the 24th of May, she was brought up to answer the charge in Westminster Hall, before a crowded and eager audience. Places to hear "were grown," says Chamberlain, "to so extraordinary a rate that four or five pieces (as they call them) was an ordinary price; and I know a lawyer that had agreed to give £10 for himself and his wife for the two days; and £50 were given for a corner that could hardly contain a dozen."[1] The Countess pleaded guilty, as was expected. It was Bacon's business to pray judgment against her; which he did in the following speech.

THE CHARGE, BY WAY OF EVIDENCE, BY SIR FRANCIS BACON, KNIGHT, HIS MAJESTY'S ATTORNEY-GENERAL, BEFORE THE LORD HIGH STEWARD, AND THE PEERS, AGAINST FRANCES COUNTESS OF SOMERSET, CONCERNING THE POISONING OF SIR THOMAS OVERBURY.[2]

It may please your Grace, my lord High Steward of England, and you my Lords the Peers:

I am very glad to hear this unfortunate Lady doth take this course, to confess fully and freely, and thereby to give glory to God and to justice. It is, as I may term it, the nobleness of an offender to confess; and therefore those meaner persons, upon whom justice passed before, confessed not; she doth. I know your Lordships cannot behold her without compassion. Many things may move you, her youth, her person, her sex, her noble family; yea, her provocations, (if I should enter into the cause itself), and furies about her; but chiefly her penitency and confession. But justice is the work of this day; the mercy-seat was in the inner part of the temple; the throne is public. But since this Lady hath by her confession prevented my evidence, and your verdict, and that this day's labour is eased; there resteth, in the

[1] Chamberlain to Carleton, 18 May 1616.

[2] 'Baconiana,' p. 3.

legal proceeding, but for me to pray that her confession may be recorded, and judgment thereupon.

But because your Lordships the Peers are met, and that this day and to-morrow are the days that crown all the former justice; and that in these great cases it hath been ever the manner to respect honour and satisfaction, as well as the ordinary parts and forms of justice; the occasion itself admonisheth me to give your Lordships and the hearers this contentment, as to make declaration of the proceedings of this excellent work of the King's justice, from the beginning to the end.[1]

It may please your Grace, my lord High Steward of England: this is now the second time, within the space of thirteen years reign of our happy sovereign, that this high tribunal-seat (ordained for the trial of Peers) hath been opened and erected, and that with a rare event, supplied and exercised by one and the same person, which is a great honour to you, my Lord Steward.

In all this mean time the King hath reigned in his white robe, not sprinkled with any one drop of the blood of any of his nobles of this kingdom. Nay, such have been the depths of his mercy, as even those noblemen's bloods, (against whom the proceeding was at Winchester,) Cobham and Grey, were attainted and corrupted, but not spilt or taken away; but that they remained rather spectacles of justice in their continual imprisonment, than monuments of justice in the memory of their suffering.

It is true that the objects of his justice then and now were very differing. For then it was the revenge of an offence against his own person and crown, and upon persons that were malcontents, and contraries to the state and government. But now it

[1] To guard against accidents, Bacon had set down a frame of what he would say in case the Countess pleaded not guilty. The manuscript, corrected by himself and docketed "The parfite charge of the Lady in case of not guilty," is preserved at Lambeth. The following is the opening.

"You have heard the indictment against this lady well opened; and likewise the point in law that might make some doubt declared and solved; wherein certainly the policy of the law of England is much to be esteemed, which requireth and respecteth form in the indictment, and substance in the proof.

"This scruple it may be hath moved this lady to plead not guilty, though for the proof I shall not need much more than her own confession, which she hath formerly made, free and voluntary, and therein given glory to God and Justice. And certainly confession, as it is the strongest foundation for justice, so it is a kind of corner-stone, whereupon justice and mercy may meet.

"The proofs which I shall read in the end for the ground of your verdict and sentence will be very short, as much as may serve to satisfy your honours and consciences for the conviction of this lady, without wasting of time in a case clear and confessed, or ripping up guiltiness against one that hath prostrated herself by confession, or preventing and deflowering to-morrow's evidence; and therefore the oc-

is the revenge of the blood and death of a particular subject, and the cry of a prisoner; it is upon persons that were highly in his favour; whereby his Majesty to his great honour hath shewed to the world (as if it were written in a sun-beam) that he is truly the lieutenant of him with whom there is no respect of persons; that his affections royal are above his affections private; that his favours and nearness about him are not like Popish Sanctuaries, to privilege malefactors; and that his being the best master in the world doth not let him from being the best King in the world. His people (on the other side) may say to themselves, *I will lie down in peace, for God and the King and the Law protect me* against great and small. It may be a discipline also to great men, specially such as are swoln in their fortunes from small beginnings, that the King is as well able to level mountains as to fill valleys, if such be their desert.

But to come to the present case: The great frame of justice (my Lords) in this present action, hath a Vault, and it hath a Stage; a Vault wherein these works of darkness were contrived; and a Stage, with steps, by which they were brought to light.

For the former of these, I will not lead your Lordships into it, because I will engrieve nothing against a penitent, neither will I open any thing against him that is absent. The one I will give to the laws of humanity, and the other to the laws of justice: for I shall always serve my master with a good and sincere conscience, and I know that he accepteth best. Therefore I will reserve that till to-morrow, and hold myself to that which I called the stage or theatre, whereunto indeed it may be fitly compared: for that things were first contained within the invisible judgments of God, as within a curtain, and after came forth, and were acted most worthily by the King, and right well by his ministers.[1]

casion itself doth admonish me to spend this day rather in declaration than in evidence, giving God and the King the honour, and your Lordships and the hearers the contentment, to set before you the proceeding of this excellent work of the King's justice from the beginning to the end; and so to conclude with the reading the confessions and proofs.

"My Lords, this is now the second time," etc.

In the body of the speech (which begins at the top of page 300, and does not appear to have been altered at all) I have used this manuscript for my text; the original paper from which Tenison took the copy in the 'Baconiana' not being to be found.

[1] Instead of this paragraph the other speech has "For the former of these, though it was first in act, yet it is last in proof; and therefore I will bring this work of justice first to the period of this day, and then go on with this day's work."

Sir Thomas Overbury was murdered by poison the 15th of September, 1613. 11 *Reg.* This foul and cruel murder did for a time cry secretly in the ears of God; but God gave no answer to it otherwise than that voice (which sometimes he useth) which is *vox populi*, the speech of the people. For there went then a murmur that Overbury was poisoned; and yet this same submiss and soft[1] voice God, the speech of the vulgar people, was not without a counter-tenor or counter-blast of the devil, (who is the common author both of murder and slander); for it was given out that Overbury was dead of a foul disease; and his body, which they had made *corpus Judaicum* with their poisons, so as it had no whole part, must be said to be leprosed with vice, and so his name poisoned as well as his body; for as to dissoluteness, I never[2] heard the gentleman noted with it; his faults were of insolency, turbulency, and the like of that kind, the other part of the soul, not the voluptuous.[3]

Mean time there was some industry used (of which I will not now speak) to lull asleep those that were the revengers of the blood, the father and the brother of the murdered; and in these terms things stood by the space almost of two years; during which time God did so blind the two great procurers, and dazzle them with their own[4] greatness, and bind and nail fast the actors and instruments with security upon their protection, as neither the one looked about them, nor the other stirred or fled, nor were conveyed away, but remained here still as under a privy arrest of God's judgments; insomuch as Franklin, that should have been sent over to the Palsgrave with good store of money, was by God's providence and the accident of a marriage of his diverted and stayed.

But about the beginning of the progress the last summer, God's judgments began to come out of their depths. And as the revealing of murders is commonly such as a man [may] say,[5] *à Domino hoc factum est;* it is God's work, and it is marvellous in our eyes: so in this particular it was most admirable; for it came forth first by a compliment, a matter of courtesy. My Lord of Shrewsbury, that is now with God, recommended to a counsellor of state (of special trust by his place) the late lieu-

[1] *the same submiss and low:* B. [2] *have not:* B.
[3] The words after "kind" (which are not in the 'Baconiana') are added in the MS. in Bacon's hand.
[4] B. omits "own." [5] The MS. omits "may;" B. reads "said."

tenant Helwisse, only for acquaintance, as an honest and worthy gentleman, and desired him to know him, and to be acquainted with him. That counsellor answered him civilly, That my Lord did him a favour, and that he should embrace it willingly; but he must let his Lordship know, that there did lie a heavy imputation upon that gentleman, Helwisse; for that Sir Thomas Overbury, his prisoner, was thought to have comen to a violent and untimely death. When this speech was reported back by my Lord of Shrewsbury to Helwisse, *perculit illico animum*, he was stricken with it: and being a politic man, and of likelihood doubting that the matter would break forth at one time or other, and that others might have the start of him, and thinking to make his own case by his own tale, resolved with himself upon this occasion to discover unto my Lord of Shrewsbury and that counsellor, that there was an attempt (whereunto he was privy) to have poisoned Overbury by the hands of his under-keeper Weston; but that he checked it and put it by, and dissuaded it, and related so much to him indeed:[1] but then he left it thus, that it[2] was but an attempt or[3] untimely birth, never executed; and as if his own fault had been no more but that he was honest in forbidding, but fearful of revealing, and impeaching or accusing great persons: and so with this fine point thought to save himself.

But that great counsellor[4] of estate, wisely considering that by the lieutenant's own tale it could not be simply a permission or weakness; for that Weston was never displaced by the lieutenant notwithstanding that attempt; and coupling the sequel by the beginning, thought it matter fit to be brought before his Majesty, by whose appointment Helwisse set down the like declaration in writing.

Upon this ground the King playeth Salomon's part, *Gloria Dei celare rem, et gloria regis investigare rem;* and sets down certain papers of his own hand, which I mought term to be *claves justitiæ*, keys of justice; and may serve both for a precedent for Princes to imitate, and for a direction for Judges to follow: and his Majesty carried the balance with a constant and steady hand, evenly, and without prejudice, whether it were a true accusation of the one part, or a practice and factious de-

[1] This clause is not in the 'Baconiana.'
[2] The MS. omits "it."
[3] *as an attempt or an:* B.
[4] *that councellor:* B.

vice[1] of the other: which writing, because I am not able to express according to the worth thereof, I will desire your Lordship[2] anon to hear read.

This excellent foundation of justice being laid by his Majesty's own hand, it was referred unto some counsellors to examine further; who gained some degrees of light from Weston, but yet left it unperfect.

After it was referred to Sir Edward Coke, Chief Justice of the King's Bench, as a person best practised in legal examinations; who took a great deal of indefatigable pains in it without intermission, having (as I have heard him say) taken at least three hundred examinations in this business.

But these things were not done in a corner, I need not speak of them. It is true that my lord Chief Justice, in the dawning and opening of the light, finding the matter touched upon these great persons, very discreetly became suitor to the King to have greater persons than his own rank joined with him; whereupon your Lordship, my Lord Steward of England, to whom the King commonly resorteth *in arduis*,[3] and my Lord Steward of the King's house, and my Lord Zouch, were joined with him.

Neither wanted there (this while) practice to suppress testimony, to deface writings, to weaken the King's resolution, to slander the justice,[4] and the like. Nay, when it came to the first solemn act of justice, which was the arraignment of Weston, he had his lesson to stand mute, which had arrested the whole wheel of justice; but this dumb devil, by the means of some discreet divines and the potent charm of justice together, was cast out; neither did this poisonous adder stop his ear to those charms, but relented and yielded to his trial.

Then follows the[5] proceedings of justice against the other offenders, Turner, Helwisse, Franklin.

But all these being but the organs and instruments of this fact, the actors and not the authors, justice could not have been crowned without this last act against these great persons; else Weston's censure or prediction might have been verified, when he said he hoped the small flies should not be caught and the

[1] *scandal*: B.
[2] *Lordships*: B.
[3] This clause is omitted in B.
[4] Meaning, I suppose, the Chief Justice. See above, p. 219.
[5] *Then followed the other*: B.

great escape:[1] wherein the King, being in great straits between the defacing of his honour and of his creature, hath (according as he useth to do) chosen the better part, reserving always mercy to himself.

The time also of this[2] justice hath had his[3] true motions. The time until this Lady's deliverance was due unto honour, christianity, and humanity, in respect of her great belly. The time since was due to another kind of deliverance too; which was that some causes of estate which were in the womb might likewise be brought forth, not for matter of justice but for reason of state. Likewise this last procrastination of days had the like weighty grounds and causes.[4]

[1] *greater:* B. [2] B. omits "this."

[3] *its* in the 'Baconiana.' That the MS. has *his*, I cannot assert positively, because at the time I made the collation my attention had not been called to the fact that *its* was a form not then in use. But I have so little doubt that it will be found so, that I make the correction at a venture.

[4] From this point the other speech proceeds thus:

"And this is the true and brief representation of this excellent work of the King's Justice.

"Now for the evidence against this Lady, I am sorry I must rip it up. I shall first shew you the purveyance or provision of the poisons; that they were 7 in number brought to this Lady and by her billetted and laid up till they might be used; and this done with an oath or vow of secrecy which is like the Egyptian darkness, a gross and palpable darkness that may be felt.

"Secondly, I shall show you the exhibiting and sorting of this same number or volley of poisons: white arsenic was fit for salt, because it is of like body and colour; the poison of great spiders and of the venomous fly cantharides was fit for pig's sauce or partridge sauce, because it resembled pepper; as for mercury-water, and other poisons, they might be fit for tarts, which is a kind of hotch-pot wherein no one colour is so proper: and some of these were delivered by the hands of this Lady, and some by her direction.

"Thirdly, I shall prove and observe unto you the cautions of these poisons; that they might not be too swift, lest the world should startle at it by the suddenness of the dispatch; but they must abide long in the body, and work by degrees: and for this purpose there must be essays of them upon poor beasts, *etc.*

"And lastly, I shall shew you the rewards of this impoisonment, first demanded by Weston and denied because the deed was not done; but after the deed done and perpetrated, that Overbury was dead, then performed and paid to the value of 180*l.*

"And so without further aggravation of that which in itself bears her own tragedy, I will conclude with the confessions of this Lady herself, which is the strongest support of justice, and yet is the footstool of mercy. For as the Scripture says, *Mercy and Truth have kissed each other;* there is no meeting or greeting of mercy, till there be a confession or trial of truth. For these read,

"Franklin, 16 November.
Franklin, 17 November.
Rich. Weston, 1° Octobris.
Rich. Weston, 2 Octobris.
Will. Weston, 2 Octobris.
Rich. Weston, 3 Octobris.
Helwisse, 2 Octobris.
The Countess letter without date.
The Countess confession, 8 January.

But (my Lords) where I speak of a stage, I doubt I hold you upon the stage too long. But before I pray judgment, I pray your Lordships to hear the King's papers read, that you may see how well the King was inspired, and how nobly he carried it, that innocency might not have so much as aspersion.

Frances Countess of Somerset hath been indicted and arraigned, as accessary before the fact, for the murder and impoisonment of Sir Thomas Overbury, and hath pleaded guilty, and confesseth the indictment: I pray judgment against the prisoner.

The prisoner being asked in the usual form what she had to say, the following passage occurred, according to the report in the State Trials:—

"*Countess of Somerset.* I can much aggravate but nothing extenuate my fault. I desire mercy and that the Lords will intercede for me to the King. (This she spoke humbly, fearfully, and so low that the Lord Steward could not hear it. But Mr. Attorney related it.)

"*Mr. Attorney.* The Lady is so touched with remorse and sense of her fault that grief surprises her from expressing herself: but that which she hath confusedly said is to this effect, That she cannot excuse herself, but desires mercy."[1]

This was the whole of the proceeding that day, and it was over by noon. "She won pity (says Chamberlain) by her sober demeanour, which in my opinion was more curious and confident than was fit for a Lady in such distress; and yet she shed or made shew of some tears divers times. She was used with more respect than usual, nothing being aggravated against her by any circumstance, nor any invective used, but only touching the main offence of murder; as likewise it was said to day to be the King's pleasure, that no odious or uncivil speeches should be given. The general opinion is that she shall not die; and many good words were given to put her in hope of the King's mercy, wherein the Lord Steward with the rest of the Peers promised their best mediation."[2]

"Her carriage (says Sherburn, writing to Carleton on the same day) hath much commended her: for both before and after her condemnation she behaved herself so nobly and worthily as did express to the world she was well taught and had better learned her lesson. . . . It is conceived by many that in regard she stood not upon her justification, but confessed and submitted herself to the law and

[1] State Trials, p. 957.
[2] Chamberlain to Carleton, writing in haste at 8 o'clock on the 25th of May.

mercy of the King, that she shall not die; which they ground upon Mr. Attorney's speech, which did intimate such a kind of hope; but for my part I am not so confident, because of the King's solemn protestation made at the first discovery of the business, that the severity of the law should be executed upon the offenders; and seeing so many have already suffered I cannot believe he will spare this noble Lady, though the greatness of her birth and friends may plead much for her."[1]

In the meantime she was condemned to be hanged, and taken back to the Tower; most of the bystanders, according to Camden, pitying her.[2]

5.

On the same night, when Sir George More warned the Earl to be ready for his trial the next morning (for which it seems he was still unprepared, having trusted probably to the operation of his recent threat upon the King's mind), he was alarmed by the effect the message took upon him. According to Weldon, who professes to have heard the story from Sir George himself, "he did absolutely refuse it, and said they should carry him in his bed; that the King had assured him he should not come to any trial, neither durst the King bring him to trial;" using such "bold and undutiful expressions" that Sir George went off in great consternation to Greenwich, waked up the King at midnight, and asked him what was to be done. The King, he adds, did not know, but "falling into a passion of tears" left it to Sir George's management, promising that if he "helped him in this great strait, he should find he did it for a thankful master." Upon which Sir George returned to Somerset at 3 in the morning, and assured him, as from the King, that though it was necessary that he should appear at the bar to satisfy justice, he should "return instantly again without any further proceedings." "With which trick he allayed his fury and got him quietly about 8 in the morning to the Hall."[3]

Stories told by men like Weldon are not the more to be believed because they have some foundation in fact. But when the fact can be discovered it generally detects the fiction in the superstructure. In this case we happen to have good evidence that some outbreak of the kind did occur on the part of Somerset, and that some immediate communication was made about it by Sir George More to the King. But the letter which proves that so much was true proves also that the rest of the circumstances were badly invented. The letter which contains the evidence is the King's answer to Sir George's commu-

[1] S. P. Dom. James I., vol. lxxxvii. no. 29. [2] Annalium Apparatus.
[3] 'Secret History of the Court of James I.,' vol. i. p. 421.

nication; a letter still extant in autograph. From this it appears that on the very eve of the trial More had reported to the King a new difficulty. Somerset had been seized with some "strange fit," —either was, or pretended to be, either mad or unable to move. In answer to which "strange news" the King directs him to let Lord Hay and Sir Robert Carr (who had already been sent) speak with him first; and "when that is done," he adds, "if he shall still refuse to go, ye must do your office, except he be either apparently sick or distracted of his wits; in any of which cases ye may acquaint the Chancellor with it, so that he may adjourn the day till Monday next, between which time [and this] if his sickness or madness be counterfeited, it will manifestly appear." "If he have said anything of moment to the Lord Hay," he concludes, "I expect to hear of it with all speed; if otherwise let me not be troubled with it till the trial be past."[1] This therefore was the last stage of the negotiation; and the end of it was that Somerset, finding that his last device had failed like the rest and that he could not help himself, consented to go and went quietly.

The throng was as great and the audience as distinguished as the day before; "more ladies and great personages," says Chamberlain, "than ever I think were seen at any trial." The proceedings were much more interesting. For the evidence which constituted the case against Somerset was now to be produced in public for the first time. The story of the murder,—the way in which and the persons by whom it was done,—had been heard over and over again; and the principal facts which involved the Countess as accessary had come out in the trials or confessions of her instruments. But with regard to the Earl, though it was understood upon what should have been good authority that there was conclusive evidence against him, no one had yet heard what it was.

The indictment having been read, the prisoner having pleaded not guilty, and the Sergeant Crier having called upon all those that were to give in evidence against him to make their appearance, Serjeant Montague opened the case with a brief statement of the several acts charged; concluding that the question the Peers had to consider was in substance only this—"Whether my Lord of Somerset procured or caused the poisoning of Sir T. Overbury, or no?"

Then Bacon rose to give in the evidence. I take his speech from the copy in Tenison's 'Baconiana,' which professes to be a copy from Bacon's own, which I have not been able to find. The other transcripts which I have seen may occasionally suggest a better reading, or supply a lost sentence, but are evidently of inferior authority, so that the variations are for the most part not worth recording.

[1] Archæologia, vol. xviii.

In this, however, as in other similar cases, it is doubtful whether Bacon's own copy was a draft of what he intended to say or a report from recollection of what he said. Upon either supposition variations would almost inevitably occur. And therefore I have compared it with other reports made apparently by ear-witnesses, and where I have noticed any differences which cannot be attributed to the imperfect hearing or art of the reporter, I have given them in the notes.

THE CHARGE OF SIR FRANCIS BACON, HIS MAJESTY'S ATTORNEY GENERAL, BY WAY OF EVIDENCE, BEFORE THE LORD HIGH STEWARD AND THE PEERS, AGAINST ROBERT EARL OF SOMERSET FOR THE POISONING OF OVERBURY.[1]

It may please your Grace, my Lord High Steward of England, and you my Lords the Peers; you have here before you Robert Earl of Somerset, to be tried for his life, concerning the procuring and consenting to the impoisonment of Sir Thomas Overbury, then the King's prisoner in the Tower of London, as an accessary before the fact.

I know your Lordships cannot behold this nobleman, but you must remember his great favour with the King, and the great place that he hath had and borne, and must be sensible that he is yet of your number and body, a Peer as you are; so as you cannot cut him off from your body but with grief; and therefore that you will expect from us that give in the King's evidence sound and sufficient matter of proof to satisfy your honours and consciences.

And for the manner of the evidence also, the King our master (who among his other virtues excelleth in that virtue of the imperial throne, which is justice) hath given us commandment that we should not expatiate nor make invectives, but materially pursue the evidence, as it conduceth to the point in question; a matter that (though we are glad of so good a warrant) yet we should have done of ourselves: for far be it from us, by any strains of wit or art, to seek to play prizes, or to blazon our names in blood, or to carry the day otherwise than upon just grounds. We shall carry the lanthorn of justice (which is the evidence) before your eyes upright, and be able[2] to save it from

[1] Tenison's 'Baconiana,' p. 14.

[2] So in 'Baconiana.' Other MSS. have "to be able." Perhaps it should be "upright and steady."

being put out with any winds of evasions or vain defences, that is our part; and within that we shall contain ourselves;[1] not doubting at all but that this evidence in itself will carry that force as it shall little need vantages or aggravations.

My Lords, the course which I shall hold in delivering that which I shall say, (for I love order), is this:

First, I will speak somewhat of the nature and greatness of the offence which is now to be tried; not to weigh down my Lord with the greatness of it, but rather contrariwise to shew that a great offence needs a great proof,[2] and that the King, however he might use this gentleman heretofore as the signet upon his finger (to use the Scripture-phrase) yet in this case could not but put him off, and deliver him into the hands of justice.[3]

Secondly, I will use some few words touching the nature of the proofs which in such a case are competent.

Thirdly, I will state the proofs.

And lastly, I will produce the proofs, either out of the examinations and matters in writing, or witnesses *viva voce*.

For the offence itself; it is of crimes (next unto high treason) the greatest; it is the foulest of felonies. And take this offence with the circumstances, it hath three degrees or stages; that it is murder; that it is murder by impoisonment; that it is murder committed upon the King's prisoner in the Tower: I might say, that it is murder under the colour of friendship; but that is a circumstance moral; I leave that to the evidence itself.

For murder, my Lords, the first record of justice which was in the world was a judgment upon murder, in the person of Adam's first-born, Cain; and though it were not punished by death, but with banishment and mark of ignominy, in respect of the primogeniture, or of the population of the world, or other points of God's secret will, yet it was adjudged, and was (as I said) the first record of justice. So it appeareth likewise in Scripture, that the murder of Abner by Joab, though it were by David respited in respect of great services past, or reason of

[1] This clause, omitted in the 'Baconiana' (B.), is supplied from the Harleian MSS. 2194, and Additional MSS. 1002, which I shall refer to respectively as H. and A.

[2] This whole clause, from "not" to "proof," omitted in B., is supplied from H. and A.

[3] So in B. A. has "howsoever he did esteem this gentleman heretofore as the signet on his finger, yet in such a case as this he was to put him off, and bring him to justice:" with which H. agrees, only omitting the last clause.

state, yet it was not forgotten. But of this I will say no more, because I will not discourse.[1] It was ever admitted, and so ranked in God's own tables, that murder is of offences between man and man (next to treason and disobedience of authority, which some divines have referred to the first table, because of the lieutenancy of God in princes and fathers) the greatest.

For impoisonment, I am sorry it should be heard of in this kingdom: it is not *nostri generis nec sanguinis:* it is an Italian crime, fit for the court of Rome, where that person that intoxicateth the Kings of the earth with his cup of poison in heretical doctrine, is many times really and materially intoxicated and impoisoned himself.

But it hath three circumstances, which make it grievous beyond other murders. Whereof the first is, that it takes a man in full peace; in God's and the King's peace: He thinks no harm, but is comforting nature with refection and food; so that (as the Scripture saith) *his table is made a snare.*

The second is, that it is easily committed, and easily concealed; and on the other side, hardly prevented, and hardly discovered. For murder by violence princes have guards, and private men have houses, attendants, and arms: neither can such murders be committed but *cum sonitu,* and with some overt and apparent act that may discover and trace the offender. But for poison, the say-cup[2] itself of princes will scarce serve, in regard of many poisons that neither discolour nor distaste; and so passeth without noise or observation.[3]

And the last is, because it containeth not only the destruction of the maliced man, but of any other;[4] *Quis modo tutus erit?* for many times the poison is prepared for one, and is taken by another: so that men die other men's deaths; *concidit infelix alieno vulnere:* and it is, as the Psalm calleth it, *sagitta nocte volans; the arrow that flies by night,* it hath no aim or certainty. And therefore if any man shall say to himself here is great talk of empoisonment but I am sure I am safe, for I have no ene-

[1] The last clause supplied from H. and A.

[2] B. has "said cup," H. and A. "the cup." "Say-cup" (written probably saie-cup) would be easily mistaken for "said cup," the final *e* being hardly distinguishable from the final *d*, in hands of that time.

[3] Instead of the last clause, H. and A. have "It cometh upon a man when he is careless and without respect, and every day a man is within the gates of death."

[4] So B. A. and H. have "because it concerneth not only the maliced man, but every man."

mies, neither have I anything that another man should long for, why that is all one: he may sit next him at the table that is meant to be poisoned and pledge him of his cup; as we may see by an example in the 21st year of King Henry the eight, that where the purpose was to poison one man there was poison put into barm or yeast, and with that barm pottage or gruel was made, whereby sixteen of the Bishop of Rochester's servants were empoisoned; nay it went into the alms basket likewise, and the poor at the gate were poisoned., And therefore with great judgment did the statute made that year touching this accident make this impoisoning high treason, because it tendeth to the dissolution of human society; for whatsoever offence doth so, is in the nature thereof high treason.[1]

Now for the third degree of this particular offence, which is that it was committed upon the King's prisoner, who was out of his own defence and merely in the King's protection, and for whom the King and state was a kind of respondent, it is a thing that aggravates the fault much. For certainly (my lord of Somerset) let me tell you this, that Sir Thomas Overbury is the first man that was murdered in the Tower of London, since the murder of the two young princes. Thus much of the offence, now to the proofs.[2]

For the nature of the proofs, your Lordships must consider that impoisonment of offences is the most secret; so secret, as if in all cases of impoisonment you should require testimony, you were as good proclaim impunity. I will put book-examples.

Who could have impeached Livia, by testimony, of the impoisoning of the figs upon the tree, which her husband was wont for his pleasure to gather with his own hands?

Who could have impeached Parisatis for the poisoning of one side of the knife that she carved with, and keeping the other side clean; so that herself did eat of the same piece of meat that the lady did that she did impoison?

The cases are infinite (and indeed not fit to be spoken of) of the secrecy of impoisonments; but wise triers must take upon them, in these secret cases, Salomon's spirit, that, where there could be no witnesses, collected the act by the affection.

[1] The whole of this passage, from "And therefore if any man," is supplied from H.

[2] This sentence, omitted in B., is supplied from H.

But yet we are not at our case:[1] for that which your Lordships are to try is not the act of impoisonment, (for that is done to your hand): all the world by law is concluded to say that Overbury was impoisoned by Weston. But the question before you is of the procurement only, and of the abetting (as the law termeth it), as accessary before the fact: which abetting is no more but to do or use any act or means which may aid or conduce unto the impoisonment.

So that it is not the buying or making of the poison, or the preparing, or confecting, or commixing of it, or the giving or sending or laying the poison, that are the only acts that do amount unto abetment. But if there be any other act or means done or used to give the opportunity of impoisonment, or to facilitate the execution of it, or to stop or divert any impediments that might hinder it, and this be with an intention to accomplish and achieve the impoisonment; all these are abetments, and accessaries before the fact. I will put you a familiar example. Allow there be a conspiracy to murder a man as he journeys by the ways, and it be one man's part to draw him forth to that journey by invitation, or by colour of some business; and another takes upon him to dissuade some friend of his, whom he had a purpose to take in his company, that he be not too strong to make his defence; and another hath the part to go along with him, and to hold him in talk till the first blow be given: all these (my Lords) without scruple are abettors to this murder, though none of them give the blow, nor assist to give the blow.

My Lords, he is not the hunter alone that lets slip the dog upon the deer, but he that lodges the deer, or raises him, or puts him out, or he that sets a toil that he cannot escape, or the like.

But this (my Lords) little needeth in this present case, where there is such a chain of acts of impoisonment as hath been seldom seen, and could hardly have been expected, but that greatness of fortune maketh commonly grossness in offending.

To descend to the proofs themselves, I shall keep this course.

First, I will make a narrative or declaration of the fact itself.

Secondly, I will break and distribute the proofs, as they concern the prisoner.

And thirdly, according to that distribution, I will produce them, and read them, or use them.[2]

[1] So H. and A. B. has "But yet we are not to come to one case."

[2] In another account of the trial (Additional MSS. 1002, f. 106) which seems

So that there is nothing that I shall say, but your Lordship (my Lord of Somerset) shall have three thoughts or cogitations to answer it: First, when I open it, you may take your aim. Secondly, when I distribute it, you may prepare your answers without confusion. And lastly, when I produce the witnesses or examinations themselves, you may again ruminate and re-advise how to make your defence. And this I do the rather, because your memory or understanding may not be oppressed or overladen with length of evidence, or with confusion of order. Nay more, when your Lordship shall make your answers in your time, I will put you in mind (when cause shall be) of your omissions.

First, therefore, for the simple narrative of the fact. Sir Thomas Overbury for a time was known to have had great interest and great friendship with my Lord of Somerset, both in his meaner fortunes and after; insomuch as he was a kind of oracle of direction unto him; and if you will believe his own vaunts (being of an insolent Thrasonical disposition), he took upon him, that the fortune, reputation, and understanding of this gentleman (who is well known to have had a better teacher) proceeded from his company and counsel.

And this friendship rested not only in conversation and business of court, but likewise in communication of secrets of estate. For my Lord of Somerset, at that time exercising (by his Majesty's special favour and trust) the office of the Secretary provisionally, did not forbear to acquaint Overbury with the King's packets of dispatches from all parts, Spain, France, the Low Countries, *etc.* And this not by glimpses, or now and then rounding in the ear for a favour, but in a settled manner: packets were sent, sometimes opened by my Lord, sometimes unbroken, unto Overbury, who perused them, copied, registered them, made tables of them[1] as he thought good: so that I will undertake the time was when Overbury knew more of the secrets of state than

to have been drawn up by an ear-witness, the following passage is interposed here. "*My L. of S.* I humbly desire to answer every particular as it is objected against me. My memory is short and so I may omit to answer some of the particulars and most principal objections. *Lo. Stew.* The constant course of the Court must be kept. You cannot interrupt the King's counsel. They must give their evidence entire before you come to your answer. You have now pen and ink to observe what they urge against you, and if after you omit anything when you come to your answer, you shall have all the help that can be afforded you. *Attorn.* My L. of Somerset, in substance I will satisfy your request, for you shall have three cogitations," etc.

[1] Both H. and A. have "made table-talk of them."

the Council-table did.[1] Nay, they were grown to such an inwardness, as they made a play of all the world besides themselves: so as they had ciphers and jargons for the King, the Queen, and all the great men; things seldom used, but either by princes and their ambassadors and ministers, or by such as work and practise against, or at least upon princes.

But understand me (my Lord) I shall not charge you this day with any disloyalty; only I lay[2] this for a foundation, that there was a great communication of secrets between you and Overbury, and that it had relation to matters of estate, and the greatest causes of this kingdom.

But (my Lords) as it is a principle in nature, that the best things are in their corruption the worst, and the sweetest wine makes the sharpest vinegar; so fell it out with them, that this excess (as I may term it) of friendship ended in mortal hatred on my Lord of Somerset's part.[3]

For it fell out, some twelve months before Overbury's imprisonment in the Tower, that my Lord of Somerset was entered into an unlawful love towards his unfortunate Lady, then Countess of Essex: which went so far, as it was then secretly projected (chiefly between my Lord Privy Seal and my Lord of Somerset) to effect a nullity in the marriage with my Lord of Essex, and so to proceed to a marriage with Somerset.

This marriage and purpose did Overbury mainly oppugn, under pretence to do the true part of a friend (for that he counted her an unworthy woman); but the truth was that Overbury, who (to speak plainly) had little that was solid for religion or moral virtue, but was a man possessed with ambition and vainglory, was loth to have any partners in the favour of my Lord of Somerset, and especially not the house of the Howards, against whom he had always professed hatred and opposition. So all was but miserable bargains of ambition.

[1] A report of the arraignment in the Cambridge University Library (Ee. IV. 12, which I take to be a transcript from a note taken at the time by some one who was present) mentions an interruption at this point. "Here," it says, "my Lord of Somerset interrupted Mr. Attorney and demanded of him why he urged these impertinent and by-matters, done by the King's commandment? Who replied, To show that as there was common secrets between you, so there were common dangers," etc.

[2] So H. B. has "say."

[3] In H. and A. the following sentence occurs here: written no doubt by Bacon; but whether struck out by himself or by Tenison may be a question. "I have heard my Lord Steward say sometimes in the Chancery that fraud and frost end foul. And I may add a third, and that is the friendship of ill men; which may be truly termed conspiracy and not friendship: for it fell out," etc.

And (my Lords) that this is no sinister construction, will well appear unto you, when you shall hear that Overbury makes his brags to my Lord of Somerset, that he had won him the love of the lady by his letters and industry: so far was he from cases of conscience in this matter. And certainly (my Lords) howsoever the tragical misery of that poor gentleman Overbury ought somewhat to obliterate his faults; yet because we are not now upon point of civility, but to discover the face of truth to the face of justice; and that it is material to the true understanding of the state of this cause; Overbury was naught and corrupt, the ballads must be amended for that point.

But to proceed; when Overbury saw that he was like to be dispossessed of my Lord here, whom he had possessed so long, and by whose greatness he had promised himself to do wonders; and being a man of an unbounded and impetuous spirit, he began not only to dissuade, but to deter him from that love and marriage; and finding him fixed, thought to try stronger remedies, supposing that he had my Lord's head under his girdle, in respect of communication of secrets of estate (or, as he calls them himself in his letters, secrets of all natures); and therefore dealt violently with him to make him desist, with menaces of discovery of secrets, and the like.

Hereupon grew two streams of hatred upon Overbury; the one from the Lady, in respect that he crossed her love and abused her name, which are furies to women; the other of a deeper and more mineral nature, from my Lord of Somerset himself; who was afraid of Overbury's nature, and that if he did break from him and fly out, he would mine into him and trouble his whole fortunes.

I might add a third stream from the Earl of Northampton's ambition, who desires to be first in favour with my Lord of Somerset; and knowing Overbury's malice to himself and his house, thought that man must be removed and cut off. So it was amongst them resolved and decreed that Overbury must die.

Hereupon they had variety of devices. To send him beyond sea, upon occasion of employment, that was too weak; and they were so far from giving way to it, as they crossed it. There rested but two ways, quarrel or assault, and poison. For that of assault, after some proposition and attempt, they passed from

it;[1] it was a thing too open, and subject to more variety of chances. That of poison likewise was a hazardous thing, and subject to many preventions and cautions, especially to such a jealous and working brain as Overbury had, except he were first fast in their hand.

Therefore the way was first to get him into a trap, and lay him up, and then they could not miss the mark. Therefore in execution of this plot it was devised, that Overbury should be designed to some honourable imployment in foreign parts, and should under-hand by the Lord of Somerset be incouraged to refuse it; and so upon that contempt he should be laid prisoner in the Tower, and then they would look he should be close enough, and death should be his bail.[2] Yet were they not at their end. For they considered that if there was not a fit lieutenant of the Tower for their purpose, and likewise a fit under-keeper of Overbury; first, they should meet with many impediments in the giving and exhibiting the poison: secondly, they should be exposed to note and observation, that might discover them: and thirdly, Overbury in the meantime might write clamorous and furious letters to other his friends, and so all might be disappointed. And therefore the next link of the chain was to displace the then lieutenant Waade, and to place Helwisse, a principal abetter in the impoisonment: again, to displace Cary, that was the under-keeper in Waade's time, and to place Weston, who

[1] The Cambridge MS., which, though short and imperfect, appears to be the work of an intelligent reporter, gives this passage rather fuller. "Thereupon it was resolved by Northampton that some should be appointed to quarrel with him in Court, hoping, he being of a hot and choleric disposition would presently take fire and so commit some act for which he might be committed. This conclusion was not followed. But in respect Overbury had been bred in the University, and was a scholar, and likewise had been a traveller in foreign parts, and had the languages, as also was bred in Court,—all which met together in him and made him fit for foreign employments; therefore they resolved to procure him to be named ambassador for some foreign parts, then to animate him to commit a contempt in refusing that employment, for which he might be committed; and so to proceed with him as occasion should serve."

[2] The report in State Paper Office gives this rather fuller, and indicates a little variation here in the speech as spoken from the speech as prepared or remembered. "My Lords, no man is imprisoned without a cause; the law of England would have all men free; some ground therefore must be raised to abridge Overbury of his liberty, which was thus comploted: the King should be moved to send Overbury upon employment beyond the seas, from which Somerset should privately and under the pretext of friendship dissuade him even to a denial; for now, my Lords, you must understand Somerset had raked up his fire in the ashes, and not long before professed a reconciliation. Upon this denial to serve his Ma^ty they knew the consequence for contempt would be Overbury's imprisonment; from which Somerset, through his greatness, assured him a quick and speedy release; and indeed he did deliver him, but his bail was death." (Amos, p. 129.)

was the principal actor in the impoisonment: and this was done in such a while, that it may appear to be done as it were with one breath;[1] as there were but fifteen days between the commitment of Overbury, the displacing of Waade, the placing of Helwisse, the displacing of Cary the under-keeper, the placing of Weston, and the first poison given two days after.[2]

Then when they had this poor gentleman in the Tower close prisoner, where he could not escape nor stir, where he could not feed but by their hands, where he could not speak nor write but through their trunks; then was the time to execute the last act of this tragedy.

Then must Franklin be purveyor of the poisons, and procure five, six, seven several potions, to be sure to hit his complexion. Then must Mris Turner be the say-mistress of the poisons to try upon poor beasts, what's present, and what works at distance of time. Then must Weston be the tormentor, and chase him with poison after poison; poison in salts, poison in meats, poison in sweetmeats,[3] poison in medicines and vomits, until at last his body was almost come, by use of poisons, to the state that Mithridates' body was by the use of treacle and preservatives, that the force of the poisons were blunted upon him: Weston confessing, when he was chid for not dispatching him, that he had given him enough to poison twenty men. Lastly, because all this asked time, courses were taken by Somerset both to divert all means of Overbury's delivery, and to entertain Overbury by continual letters, partly of hopes and projects for his delivery, and partly of other fables and negotiations; somewhat like some kind of persons (which I will not name) which keep men in talk of fortune-telling, when they have a felonious meaning.[4]

[1] B. puts the words "that . . . breath" in a parenthesis; which must be a mistake.

[2] "And of these (H. adds) you must cut off ten, because all things were resolved 10 days before this was done, so that upon the matter all was in 5 [miscopied 15] days." The report in the State Paper Office gives it again a little fuller. "In 15 days Overbury was committed, Sir William Wade the honest Lieutenant displaced, Sir Jarvis Hellwish made Lieutenant in his place, his old keeper rejected, and Weston commended and accepted in his stead. The 21 of April 1613 was Overbury committed; the 6 or 7 of May, being the next month after, Sir Jarvis came into the Tower, Weston was received and administered the first poison: indeed upon the matter in 5 days were all these alterations plotted and acted."

[3] A. has "poison in saltmeats, poison in sweetmeats."

[4] So B. H. has "that kind of persons who keep in a tale of fortune-telling when they have a felonious intent to pick their pockets or purses." The report in the State Paper Office gives the passage thus: "that he used him much like fortune tellers, that tell a tale in a man's face whilst another cuts his purse." With

And this is the true narrative of this act of impoisonment, which I have summarily recited.

Now for the distribution of the proofs, there are four heads of proofs to prove you guilty (my lord of Somerset) of this impoisonment; whereof two are precedent to the impoisonment,[1] the third is present, and the fourth is following or subsequent. For it is in proofs as it is in lights, there is a direct light, and there is a reflexion of light, or back-light.

The first head or proof thereof is, That there was a root of bitterness, a mortal malice or hatred, mixed with deep and bottomless fears, that you had towards Sir Thomas Overbury.

The second is, That you were the principal actor, and had your hand in all those acts which did conduce to the impoisonment, and which gave opportunity and means to effect it; and without which the impoisonment could never have been, and which could serve or tend to no other end but to the impoisonment.

The third is, That your hand was in the very impoisonment itself, which is more than needs to be proved; that you did direct poison, that you did deliver poison, that you did continually hearken to the success of the impoisonment and that you spurred it on and called for dispatch when you thought it lingered.

And lastly, That you did all the things after the impoisonment, which may detect a guilty conscience, for the smothering of it and avoiding punishment for it: which can be but of three kinds: That you suppressed, as much as in you was, testimony: That you did deface, and destroy, and clip and misdate all writings that might give light to the impoisonment; and that you did fly to the altar of guiltiness, which is a pardon, and a pardon of murder, and a pardon for yourself, and not for your Lady.

In this (my Lord) I convert my speech to you, because I would have you attend the points of your charge, and so of[2] your defence, the better. And two of these heads I have taken to myself, and left the other two to the King's two Serjeants.

For the first main part, which is the mortal hatred, coupled with fear, that was in my Lord of Somerset towards Overbury, al-

which another earwitness's report (Add. MSS. 1002, f. 114) nearly agrees: "My L. of Somerset, you used him as fortune tellers do poor people in the country, hold them in a tale while they steal their purse:" which were probably the words as really delivered. [1] "Imprisonment" in B. [2] make: H.

though he did palliate it with a great deal of hypocrisy and dissimulation even to the end; I shall prove it (my Lord Steward, and you my Lords and Peers) manifestly, by matter both of oath and writing. The root of this hatred was that that hath cost many a man's life; that is, fear of discovering secrets: secrets (I say) of a high and dangerous nature. Wherein the course that I will hold shall be this.

First, I will shew that such a breach and malice was between my Lord and Overbury, and that it burst forth into violent menaces and threats on both sides.

Secondly, That these secrets were not light, but of a high nature; for I will give you the elevation of the pole. They were such as my Lord of Somerset for his part had made a vow, that Overbury should neither live in court nor country. That he had likewise opened himself and his own fears so far, that if Overbury ever came forth of the Tower, either Overbury or himself must die for it. And of Overbury's part, he had threatened my Lord, That whether he did live or die, my Lord's shame should never die, but he would leave him the most odious man of the world. And further that my Lord was like enough to repent it in the place where Overbury wrote, which was the Tower of London. He was a true prophet in that. So here is the height of the secrets.

Thirdly, I will shew you that all the King's business was by my Lord put into Overbury's hands: So as there is work enough for secrets, whatsoever they were. And like Princes confederates, they had their ciphers and jargons.

And lastly I will shew you that it is but a toy to say that the malice was only in respect he spake dishonourably of the Lady; or for doubt of breaking the marriage: for that Overbury was a coadjutor to that love, and the Lord of Somerset was as deep in speaking ill of the Lady as Overbury. And again, it was too late for that matter, for the bargain of the match was then made and past. And if it had been no more but to remove Overbury from disturbing of the match, it had been an easy matter to have banded over Overbury beyond seas, for which they had a fair way; but that would not serve their turn.

And lastly, *periculum periculo vincitur*, to go so far as an impoisonment must have a deeper malice than flashes: for the cause must bear a proportion to the effect.

For the next general head of proofs, which consists in acts preparatory to the middle acts, they are in eight several points of the compass, as I may term it.

First, That there were devices and projects to despatch Overbury, or to overthrow him, plotted between the Countess of Somerset, the Earl of Somerset, and the Earl of Northampton, before they fell upon the impoisonment: for always before men fix upon a course of mischief there be some rejections; but die he must one way or other.

Secondly, That my Lord of Somerset was principal practiser (I must speak it) in a most perfidious manner to set a train or trap for Overbury to get him into the Tower; without which they never durst have attempted the impoisonment.

Thirdly that the placing of the Lieutenant Helwisse, one of the impoisoners, and the displacing of Waade, was by the means of my Lord of Somerset.

Fourthly, That the placing of Weston the underkeeper, who was the principal impoisoner, and the displacing of Cary, and the doing of all this within fifteen days after Overbury's commitment, was by the means and countenance of my Lord of Somerset. And these two were the active instruments of the impoisonment: and this was a business that the Lady's power could not reach unto.

Fifthly, That because there must be a time for the tragedy to be acted, and chiefly because they would not have the poisons work upon the sudden; and for that the strength of Overbury's nature, or the very custom of receiving poison into his body, did overcome the poisons that they wrought not so fast; therefore Overbury must be held in the Tower. And as my Lord of Somerset got him into the trap, so he kept him in, and abused him with continual hopes of liberty; and diverted all the true and effectual means of his liberty, and made light of his sickness and extremities.

Sixthly, that not only the plot of getting Overbury into the Tower, and the devices to hold him and keep him there, but the strange manner of his close keeping (being in but for a contempt) was by the device and means of my Lord of Somerset, who denied his father to see him, denied his servants that offered to be shut up close prisoners with him, and in effect handled it so that he was close prisoner to all his friends, and open and exposed to all his enemies.

Seventhly, that the advertisements which my Lady received from time to time from the Lieutenant or Weston touching Overbury's state of body or health, were ever sent up to the Court, though it were in progress, and that from my Lady: such a thirst and listening they had to hear that he was despatched.

Lastly, there was a continual negotiation to set Overbury's head on work, that he should make some recognition to clear the honour of the Lady, and that he should become a good instrument towards her and her friends: all which was but entertainment: for your Lordships shall plainly see divers of my Lord of Northampton's letters (whose hand was deep in this business) written (I must say it) in dark words and clauses; that there was one thing pretended another intended; that there was a real charge and there was somewhat not real; a main drift and a dissimulation. Nay further, there are some passages which the Peers in their wisdom will discern to point directly at the impoisonment.

[After this inducement followed the evidence itself.]

Of the evidence which followed we have two independent reports, each of which proves the imperfection of the other in detail, while at the same time it bears witness to its accuracy in general. The imperfection was inevitable. Without a regular system of reporting, including relays of practised hands conveniently placed for hearing, it must have been impossible to obtain anything like a *complete* account of a trial which lasted thirteen hours. No such system had yet been introduced; nor was it any object in this case with those who had command of the records to publish such an account. When a popular favourite, like the late Earl of Essex,—or the hero of a popular cause, like Sir Walter Ralegh after his last expedition,—or persons belonging to a party in the country considerable enough to make their discontent dangerous, like the Gunpowder conspirators,—were sentenced to the gallows or the block, the Government occasionally found it expedient to prevent rumours by publishing an authentic account of the charge and evidence. But in the case of the Somersets the popular sentiment ran all in favour of the sentence. It was not the execution but the respite that was likely to cause discontent; which the publication of an authorized report of the evidence for the conviction would have inflamed rather than allayed. In such cases the claim of Justice to publicity was held to be satisfied by the admission of everybody who could find room, to see and hear

the proceedings. Those who were not there had to content their curiosity with what they could learn from those who were: among whom were always some who took notes, out of which reports were manufactured for circulation in manuscript. From some manuscript of this kind—with the help perhaps of one or two others—the report of this case in the 'State Trials' was made up; and it is one of the best in the collection. I cannot indeed think, as some critics seem to do, that it enables us to judge of the case as well as the Peers who heard it and could ask questions; but it does enable us to follow the course of the evidence and to judge of its general character. Though it cannot be trusted for giving a complete or even a correct representation of all the depositions which were read or all that the *vivâ voce* witnesses spoke, it shows that each separate point which Bacon had undertaken to prove was brought forward in succession, with only a few words of preface to remind the Court of its place and office in the argument; that the evidence bearing upon it was then read, or the witnesses produced to give their testimony; and that that point was then closed, and left to make way for the next. And whatever may be thought of the conclusiveness of the evidence on some of those points, it cannot be denied, I think, that it is in every case pertinent, and material (as far as it goes), and used with scrupulous fairness.

As the whole proceeding was under Bacon's direction, it may be worth while to go shortly through the heads.

1. In support of the allegation that the friendship between Somerset and Overbury had given place to mutual malice and ill will, we have the testimony of two of Overbury's servants, who had heard altercations or seen correspondence between them; and we have also Overbury's own letters, which are certainly of a threatening character.

2. For the high nature of the secrets which had previously passed between them, we have again the testimony of a confidential servant of Overbury's, who had seen him open, make extracts from, re-seal, and send back again to Somerset, letters directed to the King;[1] and we have besides Somerset's own admission that their correspondence was conducted in cipher.

3. For the important allegation that before Overbury's imprisonment a plan had been under consideration for procuring his death in

[1] Upon which evidence Bacon, according to the report in the 'State Trials,' made the following observations: "I will not now, my Lords, endeavour to press the greatness of this offence. But I urge it thus; That you may see there were no mean secrets betwixt my Lord and Sir T. Overbury, that might rather cause him to fear him than the hindrance of his marriage. If that had been it alone, his going beyond sea would have served the turn." ('State Trials,' p. 981.)

another way,[1]—namely by instigating a gentleman who had had a personal quarrel with him to assault and kill him,—and that this design was not unknown to Somerset,—we have Somerset's own admission that such a thing had been "once resolved," though it was "not followed:" and we have also the direct testimony of the gentleman selected for the office; who confessed that the Countess had promised him £1000 and the conversion of Rochester from an enemy to a friend if he would do the deed; and that he had moreover professed himself ready to undertake it, provided Rochester would undertake to procure his pardon; which last condition the Countess was unable to promise, and so the negotiation was broken off.

4. "And now" (said Mr. Attorney, according to the report in the 'State Trials') "to the puddle of blood: the first link of which is that the means to entrap Overbury for the Tower, was by the means of my Lord of Somerset."

I may observe by the way that the wording of the remark thus put into Bacon's mouth shows that we cannot trust the report for verbal accuracy, and gives us a kind of measure of the allowance that must be made throughout for the imperfection of the medium through which we see the image. But though it would be rash to assume that it reflects even the substance of all that was material in the evidence adduced, there is every reason to believe that the writer was taking down as many as he could of the words which he heard, as correctly as he could.

The first link in the chain of evidence which was to prove that Somerset had a hand in the preparatory arrangements by which Overbury was placed and kept within the power of his enemies, was established by Somerset's own admission under his own hand, in a declaration voluntarily addressed to the King, that he had "consented to and endeavoured the imprisonment of Overbury."

5. "The second link"—proceeded Bacon according to the same reporter—"is how that Helwysse came to be Lieutenant of the Tower by your means; and yet that must have a colour: my Lord of Shrewsbury and my Lord Chamberlain must prefer him to you as their friend, though it was resolved before that he should have the place."

[1] This was introduced by Bacon, according to the report, as follows: "For the second branch that I mean to follow, and that is that you used the means to expose him to the Tower, and there to keep him close prisoner, it is a chain of 8 links and shall be shewed you upon 8 points of the compass. But before we come to these, it is to be considered that, as no consultation is ripe in an hour, so no more was theirs: for they purposed at first to have taken away his life by assault. And Franklin tells you the cause of this malice." Franklin examined, etc., "saith that my Lady Somerset said the cause of this hatred of Sir T. Overbury was, that he would pry so far into my L. of Somerset that he would put him down." 'State Trials,' p. 981.

For proof of this, we have Helwysse's testimony, confirmed by Sir Thomas Monson's, who was the messenger employed: only that Monson speaks of Lord Northampton as the first mover.

6. "Now the third link"—continued Bacon—"concerns the placing of Weston for his keeper."

For proof of this we have again the testimony of Sir Thomas Monson, who deposes that he recommended Helwysse for Overbury's keeper upon the entreaty of the Countess and with the knowledge of Northampton; and we have also Weston's own assertion that he was recommended by Lord and Lady Somerset; together with the declaration of a familiar acquaintance of his, that both before and after his appointment he was in frequent communication with the Earl, and professed to be in favour with him.[1]

7. The "fourth link," which was the *date* of this placing and displacing of officers (an important point, because it was not a thing which could have been compassed by the Countess alone) was established by Helwysse's testimony, who had stated that Overbury was committed to the Tower on the 30th of April,[2] himself appointed Lieutenant on the 6th of May, and Weston underkeeper on the 7th.

8. "Now the fifth link"—continued Bacon—"which I promised to shew you, was that this must not be done suddenly, but by degrees; and so he must be poisoned leisurely, to avoid suspicion. And in the mean space you entertained his father and mother with frivolous hopes, and yet indeed hindered and made opposition (but underhand) to all the means that were used for his delivery."

In proof of this, Overbury's father was called; who described particularly his communications with Somerset during his son's sickness and after his death; and how he had been advised not to press to see him or petition for his release, lest he should protract his imprisonment.

9. The "sixth link," which was the indifference with which Somerset in the mean time really regarded Overbury's condition; was established by the personal testimony of his brother-in-law Sir John Lidcot, who had previously taken Somerset for Overbury's true friend, but when he came to press him upon the matter had been convinced that he was not dealing sincerely.

10. The "seventh link," which was "the manner of his keeping," —namely the fact that though committed only for a contempt, he was kept (contrary to usage) as a close prisoner; and that this was

[1] Compare in this place the report sent by Sherburn to Carleton with the 'State Trials.' Amos, pp. 90, 137.

[2] So in the report in the 'State Trials.' But it should be 21st of April. See Waad's statement, S. P. Dom. James I., vol. lxxxi. no. 84.

by Somerset's management,—was established by the testimony of Sir Thomas Monson, who declared that directions to keep him close prisoner had been given to the Lieutenant by Northampton and Somerset; and it was further confirmed by that of Overbury's servant, Laurence Davis; who on applying to Somerset for leave to wait upon his master in the Tower, though he were shut up with him, had been put off with the excuse that "he shortly purposed to procure his total liberty, and this might hinder it."

11. "Now the eighth and last link" (proceeded Bacon) "is, in the interim that Overbury in the Tower was plied with poisons, my Lord thirsted after the news, to know what became of him, and continual posts went between him and my Lady; and all this while bore him in hand with other pretences."

In proof of which is adduced, first the confession of Franklin that he had been "a continual messenger between Weston and the Countess, to acquaint her how Overbury fared; who according as she heard from the Tower sent the news presently to Court to the Lord of Rochester:[1] secondly, the examination of Helwysse, who stated that he "received divers letters from the Countess, wherein she desired to know how Overbury did, that she might certify to the Court": thirdly, an admission by Somerset himself that among the many letters which passed at that time between himself and the Countess, there *may have been* some which concerned Overbury (which he had at first denied): fourthly, a statement by Loubell (the French apothecary who attended Overbury) that Somerset had sent for him on three several occasions to ask him how Overbury was; on the second of which he had told him, being particularly questioned on the point, that he thought he might recover if he were at liberty.[2]

12. "Now in respect Overbury had a working brain"—Bacon proceeded—"my Lord of Northampton must in show negotiate about his delivery and the terms of his coming out, whilst they intended his poisoning. That was real, and the other but in pretence."

In proof of this, extracts were read from several letters from North-

[1] See the report sent by Sherburn to Carleton, which differs here from the other. Amos, pp. 93, 140.

[2] The Cambridge MS. gives, in reference to this point, the evidence of one of Overbury's servants—a little more fully than I find it in other reports. "Then Payton was again called, and testified that his master being in great extremity sent him to the Earl to signify the same, and to pray his assistance for delivery. That then his L. demanded of him how sick his master was: that he answered very sick. His Lp. demanded again, how sick is he? Payton answered, exceeding sick. He demanded again, man, how sick is he? Payton answered, as sick as a man can be. Then he demanded the fourth time, how sick? So sick, my Lord, as I think he cannot live two days. At which his Lordship cried 'pish,' and went his way."

ampton to Somerset, which leave no room for doubt that a game of double dealing in some kind, at the expense of Overbury, was going on.

"And here"—Bacon concluded—"my part ends, and that that rests behind I leave to the two Serjeants."

13. Serjeant Montague followed, whose part was to prove that Somerset's hand was in the empoisonment itself. This was the most difficult part of the case, and proved, as might have been anticipated, the weakest. For whatever may have been Somerset's real share in the murder, he had no occasion to show or use his hand at all in the actual administration of the poisons. In that, the Countess did not need his help; having sufficient malice, activity, and courage of her own, and sufficient instructors, assistants, and accomplices in Mrs. Turner, Franklin, Helwysse, and Weston. If he knew what she was about, he had only to let her alone. It follows that the absence of evidence implicating him personally cannot be taken as any strong argument of his innocence. But on the other hand, if any fact was established by Serjeant Montague which could not be accounted for without supposing him guilty, both the reporters have missed it. The facts upon which he seems to have relied were (1) that Somerset sent a powder to Overbury in a letter, which made him very ill. Which was not denied. But then it had been understood that it was *meant* to make him "a little sick:" and if the severity of the illness which followed was more than could have been produced without poison, it would have been hard to prove that no poison was given him about the same time by some other hand. (2) That he sent him tarts which were poisoned. And poisoned tarts were no doubt sent. But I cannot find any proof that they were sent by the Earl, or with his knowledge, except what is implied in the Countess's expression to Helwysse, "*I was bid* to bid you say," etc. And though Coke had noted upon this, "That must needs be Rochester, for none could bid or command her but he,"[1] I doubt whether he could have given a good reason why it might not have been her uncle Northampton. (3) That the Countess had received a letter from him in which he said "he wondered things were not yet despatched," whereupon she immediately sent for Weston.[2] But this fact rests entirely upon the evidence of Franklin; who could only say that "*she told him* the letter was sent from my Lord," and that

[1] Gardiner, vol. ii. Appendix, p. 387.

[2] "Also in another letter from the Lord of Rochester was written that Sir Thomas was to come out of the Tower within two days, and they should all be undone; wherefore the Countess sent for Weston and was very angry with him that he had not despatched Sir T. Overbury."

This was part of the same confession as given in the trial of Franklin ('State Trials,' p. 947). Though missed by the reporter, it is not likely to have been left out of the evidence.

"he thought" it was about Overbury: evidence which, even if given by a less exceptionable witness, was too loose and conjectural to support any safe conclusion.

14. The last part, which was assigned to Serjeant Crew, was more to the purpose. When the King told Somerset not long after he was first called in question, that from the very beginning of the business he had "ever and at all times behaved himself quite contrary to the form that men that wish the trial of the verity ever did in such a case,"[1] he was speaking of his behaviour towards himself and the Commissioners. If he had known what else he had been doing elsewhere, he would not have seen any reason for withdrawing the charge. It may be possible to explain Somerset's proceedings when he first heard of Weston's arrest without supposing him to have been an accessary before the fact; but it must be said that they were exactly such as a man who knew that there was evidence in existence to convict him would naturally have resorted to.

The proofs on this point were gathered into three heads: 1. Practising to suppress testimony. 2. Destroying or misdating letters. 3. Endeavouring to obtain a general pardon.

The evidence on the first head was not worth much. It was Franklin's account of his interview with the Countess at the Cockpit, which I have already mentioned as the evidence on which Coke very strangely relied for proof that Somerset was an accessary to the murder before the fact;[2] and though used by Serjeant Crew for the more modest purpose of proving that he "practised" (*after* the fact) "to suppress testimony," it could not bring even that home to him, because no one but the Countess could tell what part he took. The sum of it is that *she* sent for Franklin; told him that Weston had been taken and it was likely he would be so shortly; swore him to secrecy; and after consulting the Earl, who was in an inner room, "came again and told him that the Lords, if they examined him, would put him in hope of a pardon upon confession; but, said she, believe them not; for when they have got out of you what they would, we shall all be hanged." It was something, however, to know that Somerset was in consultation with her on that occasion; and to prove this, an examination of the Countess was produced, in which, according to this reporter (who means to quote the words), "she confessed all that Franklin said concerning her discourse with him, and that my Lord was with her that night in the Cockpit:"[3] a circumstance, it must be admitted, which makes it seem *likely* that he was there to assist her in shutting Franklin's mouth.

[1] King James's letter to Somerset, printed in the 'Archæologia,' xli. p. 91.
[2] See above, p. 230.
[3] 'State Trials.' Amos, p. 101.

The evidence on the second head touches him nearer.

Laurence Davis, Overbury's servant, had asked, after his master's death, to be taken into Somerset's service, but was not listened to or befriended in any way, until "not long before the progress last summer" (which was the time when the inquiry was first raised), he sent to him for "all such letters, copies of letters, and other writings, as had passed between himself and Overbury": upon which Davis sent him "all the letters that he then had, to the number of thirty or thereabouts."

"Afterwards, two or three days before the Earl was committed, he sent for this Davis, and gave him £30, as he told him, at the request of his servant Rawlins. 'And true it is,' quoth the Earl to Davis, 'I have heretofore been moved to retain thee, but out of sight out of mind, and so I forgot thee: but now I will remember thee. Hast thou any more writings?' Davis answered, 'Only two or three in the country.' Which my Lord willed him to bring him out of hand."[1]

This again was suspicious; but it might be only with a view to recover a more perfect recollection of what had passed, and be prepared to answer. The next step was in the same direction, but more desperate. It was that which I have already mentioned as the immediate occasion for placing Somerset in restraint. He had sent a pursuivant and a locksmith with a warrant to break into a house and search for a trunk with writings in it relating to one Mrs. Hynde; which they found in the cellar, and opened: "and looking over some papers, the pursuivant, espying the names of Mrs. Turner, Overbury, and divers others in them, shut the trunk presently and said he would carry them to the Earl himself, which he performed accordingly."[2]

This could hardly be the proceeding of a man who stood quite clear;[3] but an innocent husband might do as much for the protection of a guilty wife: and it may have been of great importance to the safety of the Countess that she should get into her hands all papers belonging to Mrs. Turner. But the next proceeding must have been on his own account, and is extremely difficult to explain upon

[1] Amos, p. 148. [2] Ibid. p. 149.

[3] The question whether he had at that time been "forbidden the Court," which seems from the Cambridge MS. to have been made of some importance by Coke, may have been important as bearing on the "contempt," but does not affect the question of Somerset's complicity. "Touching the granting of the warrant, my L. Chief Justice demanded why he granted his warrant after he was forbid the Court? He denied that he was forbid the Court. My L. Chief Justice answered that he was assured by a very worthy person that you were bid to forbear the Court. He answered again, By God I was not. My Lord of Pembroke knoweth I was not." The interruption was characteristic of Coke; but it is obvious that anxiety to get possession of Mrs. Turner's papers would have been a circumstance equally suspicious, if the process resorted to had been perfectly regular.

any theory which supposes him innocent. Unfortunately our reporters do not go so well together at this part. The trial had now been going on for seven or eight hours, the weather was very hot, and they were probably both getting tired. Sometimes one and sometimes the other tells the story most intelligibly: and sometimes the variation is so wide that I think they must have been reporting different passages,—each having missed one, but not the same. In these circumstances I think it may generally be assumed that the fuller and more intelligible report is probably the more correct. And here we get it from the manuscript sent by Sherburn to Carleton, and now among the State Papers. The passage seems to me so important that I give the whole without abridgment.

"4. The examination of Sir Robert Cotton was read, taken the 2nd of December, whereby appeared how the Earl of Somerset got into his hands his own letters written to Northampton; for so Sir Robert Cotton then confessed that after the death of Northampton, being admitted to peruse and oversee all the writings, books and papers in the Earl of Northampton's study, he amongst other papers had collected 30 several letters of the Earl of Somerset to Northampton, which he upon request delivered to my Lord Treasurer, who sent them to Somerset, *who burned them some two or three days before he was committed.*

"5. The examination of the Earl of Somerset was produced, wherein he confessed the delivery of divers letters and other things in a cabinet to Sir Robert Cotton (this was the cabinet before mentioned[1]), and that Sir Robert Cotton told him *they might be so dated as might clear the prisoner if he were called in question about them;* and he further confessed that he did cut off some parts of them, and put out some words, etc. And all this was confirmed by the confession of Sir Robert Cotton himself; and indeed *when the foresaid letters were shewn,* all the dates of them were written in Sir Robert Cotton's hand; for the Earl of Somerset, Northampton, and

[1] It had been placed for "fear of searches" in the keeping of one Mrs. Farneforth or Hornford [the reporters writing by ear heard the name differently]: who sent it for safety to a merchant in Cheapside, pretending that it contained writings concerning her jointure. On St. Thomas's Day (according to the report in the 'State Trials') she desired to have it again, that her lawyer might peruse the papers. But the merchant, thinking it prudent under the circumstances to have Coke's sanction, carried the cabinet to him; who with his fellow-Commissioner Lord Zouch opened it, and found it full of letters from Overbury and Northampton.* The evidence is not very clear as to who sent Mrs. Farneforth for it, or for what purpose. But I imagine that Sir R. Cotton, having been examined not long before about the missing letters, had wanted to perform some further operations upon these; and either adapt them or destroy them.

The date which I have assigned is fixed by St. Thomas's Day. But there is a little difficulty: for St. Thomas's Day in 1615 was a Thursday, and Coke was found at St. Paul's on a Sunday hearing the sermon. The other report has "on a sudden" instead of "on St. Thomas's Day."

* See 'State Trials,' p. 979.

Overbury did never use to date any letters which passed between them. Amongst these letters thus antedated and mangled by Sir Robert Cotton, one letter especially was noted concerning the white powder which my Lord of Somerset sent unto Overbury, wherein Overbury writ to Somerset that the powder had wrought well with him, etc., but that he meant to take no more; *which letter was so dated as it might seem to have been the powder which he had received from Sir Robert Killigrew.*[1] But it could not be so, for the Earl received but 3 powders from Sir Robert Killigrew, the first whereof he told him he lost, the second the Earl took himself, the third, as it seemeth, he sent to Overbury by Rawlins, which gave him but one vomit and three stools; but there was a fourth which was sent by Davis, and fell out of the letter into his pocket, which Franklin confessed was a violent poison, and so it seemed by the operation of it as before appears."[2]

The other report, which keeps or tries to keep closer to the letter, supplies a fact of importance on this point—the *time* at which the dates were added.[3]

"*Sir R. Cotton* examined.—Saith, my Lord delivered unto his hands many of Sir T. Overbury's letters; and that he cut and dated them by my Lord's direction; and that he put in dates *the next day* to some of the letters, *after Weston's arraignment.*"

When Weston's story was known, it was easy to select a date for the letter which was inconsistent with it.

The general pardon, which was the third head, was a precaution which had been attempted a little earlier, though not quite early enough. Somerset had indeed in the previous July obtained the King's signature to a general pardon; but it had been stopped at the seal, as being general beyond all precedent; insomuch that the Lord Chancellor positively refused to pass it, though commanded

[1] There appears to be some error here. I think the reporter meant to say, or ought to have said, "the powder *which the Earl sent to Overbury by Davis.*" Davis had been employed about the beginning of June to carry a letter from the Earl to his master. He was not permitted to *see* him even in the presence of his keeper: so he delivered the letter to Weston, and as he delivered it he saw a little paper of white powder fall out; which was put in again. Weston confessed that a powder which he administered on the 3rd of June made Overbury "very sick with extreme vomitings and purgings," and that it was poison. (Amos, p. 144.) Against this Somerset alleged that he had received the powder from Sir Robert Killigrew; that it was meant to act merely as a vomit: and that it had so acted, there was Overbury's own letter to witness. The question was whether the letter related to that powder or another, and all depended upon the date. Now the date was found on examination to have been put in by Sir R. Cotton, and so the letter was made to seem to relate to the powder which was sent by Davis and *could not have been* one of those supplied by Sir. R. Killigrew. [2] Amos, p. 149.

[3] The MS. report seems to imply that the fact of the insertion of the dates had been confessed first by Somerset. But the report in the 'State Trials' makes him confess the fact in Court, when it was urged against him by Serjeant Crew. P. 991.

to do so by the King,[1] unless he might have a pardon himself for doing it: and there it stuck. This was before any suspicion had fallen upon him with regard to Overbury. But there was no time to be lost. And "a little before Michaelmas" (which was just the time when Coke entered on the investigation) Sir Robert Cotton "at my Lord Somerset's entreaty" got him a draft of the largest pardon, and the precedent was one that King Henry VIII. granted to Cardinal Wolsey; and told him, "if he desired such a one, the best way was to follow precedents."[2]

"But upon this" (says the other report) "Sir Randall Crew observed that in those pardons which they took for patterns the course was to mention the greatest offences as contempt, trespass, etc. (*sic*) but in this pardon they began with the least, and mingled the great crimes as if they would shuffle them in undiscerned, contrary to all patterns of pardons heretofore in what kind soever. And here Sir Randall Crew desired one particular to be regarded, that this very fact (accessary before the fact unto poisoning) was one of the branches of his pardon."

A petition, or "declaration" as it is called, sent by Somerset to the King in the beginning of February—the same of which Coke said at the time that good use might be made of some passages in it, "for he could not come nearer to an express confession"[3]—was then read; and with the following remarks on it from Bacon the case for the prosecution closed.

Mr. Attorney.—You see my, Lords, in this declaration of my Lord Somerset there is a brink of confession; I would to God it had a bottom. He urges that in respect he hath formerly been so great in the King's favour, and had never committed any treason, neither against his person nor state, that he should never have been called to an account for this fault, though he had been guilty: That grace timely given is a benefit; and that it is not only enough to give life, but to save reputation. But if he must be urged, then he desires his wife might be pardoned, having confessed the fact: And that if he must be put upon the hazard of a trial, the King will before give him leave to dispose of his lands and goods to the use of his wife and child; and that in the meantime he will give my Lord Hay and Sir R. Carr leave to come to him.

[1] This was on the 20th of August 1615, and shows what a mistake it is to suppose that the King had then lost his love for Somerset.

[2] Cotton's examination, as given in the 'State Trials.'

[3] Amos, p. 400.

Mr. Serjeant Crew. This declaration is an implicative confession.

Mr. Attorney. I think there is none here but wonders, seeing that all poisons be works of darkness, how this should so clearly appear. But it seems his greatness in fortune caused this grossness in offending.

Throughout the proceedings the Earl had been treated with as much respect and tenderness as a prisoner in similar case would receive at the present day. Though he was not permitted to interrupt the Counsel,[1] he had had pen and ink allowed him (at Bacon's request, according to Gondomar[2]) to take notes,[3] and at 5 o'clock in the evening he was called on for his answer, with assurance that he should not be hurried. Of the value of his defence we are hardly in a condition to judge. The reports differ very widely here, and the reason of the difference is that one of the reporters (probably a not very skilful shorthand writer, and by this time very weary) was trying to follow the words as well as he could; the other, a more intelligent man, set down the substance from memory afterwards, with the help of notes taken at the time. The first, which is the report printed in the 'State Trials,' is evidently meagre and incomplete, but probably follows the Earl's own order (for it gives the dialogue), which is desultory and ineffective. The other gives the substance of the defence upon the several heads successively, and very likely presents it to greater advantage than the original delivery. The reporter says that he made his answer "very confusedly, insisting most upon those particulars which were least material." And yet the main plot and intention of the defence appears to have been bold and judicious. It was to acknowledge that he had quarrelled with Overbury, and that he had "plotted with Northampton how to imprison him and in prison to keep him close debarred from the access of friends;"[4] but to assert that his object was only to prevent him from crossing his marriage, and that of any other purpose he was innocent and ignorant. This served as a parry to the whole of the two first heads of the charge: every one of the allegations and inferences contained in which might be admitted, without admitting that he had anything

[1] According to the Cambridge MS. Coke interposed on this point: but I think the reporter must have misunderstood him: for his observation if correctly reported seems to be in favour of interruption. "Then the Earl of Somerset prayed he might answer severally and in particular to every evidence whenas it should be given. Mr. Attorney first replied that they might not part their evidence. Then my L. Chief Justice said *they might give scattering evidences.* Mr. Attorney began," etc. But the other report represents the L. High Steward as deciding the question in the sense of the text.

[2] 'Archæologia,' xli. p. 186. [3] See note, p. 311. [4] Amos, p. 152.

to do with the murder. The breach and malice; the high nature of the secrets which had been communicated; the underhand contrivances to get Overbury into prison, and to keep him there, and to prevent him from seeing his friends; the displacing of the Lieutenant and the underkeeper to make room for others whom he could trust to follow his directions;—even the thirst for news of the progress of his sickness, and the mysterious letters from Northampton —became part of Somerset's own story: and yet the story was that he meant nothing worse than to prevent Overbury from using his tongue or pen to hinder the divorce, which was a necessary condition of the marriage. There are two points however which it fails to meet. The negotiation with Sir Davie Wood for the purpose of contriving that Overbury should be killed in a private quarrel does not fit into the story, and yet is neither explained nor disavowed: and Bacon's question why, if he only wanted to prevent Overbury from disturbing the match, he did not "suffer him to be employed beyond the seas?—Alas, Overbury had no such long hand as to reach from the other side of the sea to England, to forbid your banns or cross your love"[1]—does not appear to have been answered at all. With regard also to Northampton's letters, which I have mentioned as leaving no room for doubt that a game of double-dealing in some kind was going on at Overbury's expense, Somerset's answer cannot in either version of it (for the versions differ materially) be accounted satisfactory. According to one, he professed not to know what Northampton meant;[2] according to the other, he expressed a wish "that his answers to those letters were now to be seen;"[3] answers which he had himself destroyed.

To the direct evidence of his complicity in the poisoning, he took the obvious objections. Tarts had been sent to Overbury, some wholesome, some poisoned. He had himself sent tarts. How did it appear that they were not the wholesome ones? Powders had been sent, and it was said that one powder poisoned him. It might be so: but the powder which *he* sent was obtained from Sir Robert Killigrew, was meant to produce a slight sickness, and had the effect intended, as appeared by Overbury's own report. For the letter which Franklin declared the Countess had shown him, he admitted that it would convict him if it could be produced, but denied that he had ever written such a letter; and objected, not unreasonably, to be convicted upon "the memorative relation of such a villain as Franklin." He repeated his denial that he had had personal communications with him or with Weston; observing that though they may

[1] Amos, p. 131. A passage in Carleton's MS. which is omitted in the other report. [2] Amos, p. 153. [3] 'State Trials,' p. 995.

have come with messages to his house, it did not follow that he had seen them. The warrant to break open Weston's house and search for papers was granted, he said, at the request of his wife, who "desired it for Mrs. Turner's sake"—which was very likely not only the truth, but the whole truth.

So far, his answer to the charges was plausible, and (except in the two points which I have noticed) might seem to offer a reasonable explanation of all the facts adduced; which were all that he had expected to be brought against him. What he had not anticipated, and was not at all prepared for, was the discovery of his attempts to get rid of evidence which might incriminate him, and to forge evidence which might be alleged in exculpation. There was no way of reconciling this with the rest of his story; and being urged with it unexpectedly, he had no answer ready. He denied nothing:—neither the recovery of the letters from Davis, nor the burning, nor the clipping, nor the dating. "Now for the ante-dates," he said, "which are used as a circumstance against me, Sir R. Cotton moved me to it, saying that the dates might prove useful to me at this time." So his words are reported in the 'State Trials.' (P. 995.) According to the other report, "the dating of the letters he did not deny, but said Sir Robert Cotton did persuade him so to do, telling him that they might be so dated as might clear him of all imputation."[1] So again with regard to the burning and clipping: "I confess Sir Robert Cotton delivered me back those letters I had sent my Lord of Northampton, and that I burned them,[2] and that some parts were cut off as impertinent."[3]

His attempt to arm himself beforehand with a pardon large enough to save him harmless in case he were questioned, was not so fatal a fact as the forgery. He could assign a motive for it which had no reference to his present case. Sir Robert Cotton (he said) advised him, seeing that he had received some disgrace in the opinion of the world through the failure of the last pardon, to recover his honour by getting one drawn after the largest precedent: so he "bade him search for the largest." "And for any general words, the lawyers put them in without his privity."

At another time this explanation might have passed. At any time

[1] Amos, p. 155. According to the Cambridge MS. "The Lord Compton desired to know the date of the letter [the letter in which the powder was enclosed] but the same being showed, it appeared that at the writing it wanted a date; and Sir R. Cotton upon examination had confessed he dated the same as my Lord appointed him. He" [*i. e.* I think, Somerset] "answered, he caused the true date according to the time he received it to be set down."

[2] "Touching the burning of the letters between him and the Earl of Northampton, he answered that he had no occasion to keep his own letters, neither did he want to make monuments of his own lines." Camb. MS. [3] 'State Trials,' p. 991.

and in any circumstances Sir R. Cotton would have recommended him to follow precedents, and would have been ready to produce them; and it is conceivable that he might, under certain conditions, have advised him to outface Court enemies with some such Court triumph as this. But that if Cotton did not believe him to be guilty he would ever have advised him to resort to *forgery* for evidence of innocence, the Peers must have found it very hard to believe. And that the destruction, mutilation, and misdating of the letters, and the procurement of a very unusual kind of protection, should come all together, just at the time when he knew he was to be called in question for the murder of the man to whose affairs the letters related, and the history of whose death depended very much upon the dates—must have seemed a coincidence which called for explanation. He had not a word of explanation to offer. The effect of his defence, though it began confidently and appears to have contained one or two spirited and forcible passages, was ruined by this fatal defect, and evidently made no impression upon the Court in his favour: so little, indeed, that Bacon did not think it worth while to make any reply. When Somerset had said all he could think of—for he was neither hurried nor checked nor in any way interfered with—Bacon rose, and, according to the report in the 'State Trials,' addressed these few words to the Court.

It hath, my Lord, formerly at arraignments been a custom after the King's counsel and the prisoner's defence hath been heard, briefly to sum up what hath been said: but in this we have been so formal in the distribution that I do not think it necessary. And therefore now there is no more to be done, but that the Peers will be pleased to confer, and the prisoner to withdraw until the censures be past.

Somerset, as he withdrew, addressed the Peers again in a few words,—which read like the peroration of the speech which he had intended to make, but which had been upset by the unexpected evidence which confronted him—concluding with a protestation that he was "neither guilty nor privy to any wrong that Overbury suffered in this kind." Then the Lord Steward summed up, and the Peers (having first conferred by themselves for the space of an hour, during which they sent for the two Chief Justices to assist them[1]) returned into Court, and being asked one by one, all answered Guilty. Upon which Bacon spoke again.

[1] Camb. MS.

My Lord High Steward, Robert Earl of Somerset hath been indicted and arraigned, and put himself upon his Peers, who all without the difference of one voice have found him Guilty. I pray judgment.

And judgment was passed accordingly.

Somerset had said nothing whatever during the whole trial which in any way reflected upon the King.[1]

6.

The judgment of the bystanders appears to have quite concurred with that of the Peers. Chamberlain (though he cannot be taken as speaking for himself, because he did not stay to hear Somerset's defence[2]) reports what he had found no doubt to be the general opinion, when, writing to Carleton on the 8th of June, he says.

"When I wrote last I left the Earl of Somerset pleading for his life: but that he said for himself was so little, that he was found guilty by all his Peers; which did so little appal him, that when he was asked what he could say why sentence should not be pronounced, he stood still on his innocence, and could hardly be brought to refer himself to the King's mercy; upon which terms he stands still; and having leave to write to the King, hath only required that his judgment of hanging should be changed to heading; and that his daughter might have such of his lands as the King doth not resume and reserve in his own hands."

Sherburn, also an intelligent witness, writing to Carleton on the 25th of May, gives a fuller report.

[1] According to the Cambridge MS. he repeated his protestation of innocence once more after the verdict had been given. "Then he spake to the Lords and said his case might be any of theirs hereafter, desired them to consider that it was but the testimony of two women of bad condition that had condemned him, protested upon his salvation that he never saw Weston's face, and that he was innocent of that he was condemned."

[2] The little he heard of it he must have heard imperfectly: for in a letter written immediately on his return from the Court, he tells Carleton that he does not know how the business will end: "for" (says he) "he denies all, even his own letters, saying they be counterfeited, and will not be brought to write, whereby to shew the conformity of the character; but says that it is against law that he should be put to it:"—a passage of which there is no trace in any of the reports; and which is the more difficult to understand because there was nothing given in evidence which required the identification of *Somerset's* handwriting. His own letters he had himself by his own admission destroyed: and the act of destroying them was alleged against him as suspicious: but no writing of his own was produced. I think Chamberlain must have misunderstood something which possibly passed with reference to Sir R. Cotton's interpolations. Somerset may possibly have denied at first that the inserted dates were in Cotton's hand, and there may have been some talk about measures for identifying it, which the reporters missed, because the objection was presently withdrawn.

"This day my L. of Somerset came likewise to his trial. . . His L. had much favour shown him by being allowed for his better memory pen ink and paper, to take such notes as he thought best. ..His answers were so poor and idle as many of the Lords his Peers shook their heads and blushed to hear such slender excuses come from him, of whom much better was expected. The only thing worth note in him was his constancy and undaunted carriage in all the time of his arraignment, which as it began so did it continue to the end, without any change or alteration."[1]

To these may be added the opinion of the author of the report of the trial which Sherburn sent to Carleton; who, though he gives much the best and fullest and most spirited version of Somerset's defence that exists, evidently considered it a failure. I am not aware that any contemporary evidence can be produced which tells the other way. And it is quite possible that those who heard and saw the trial had better ground for their opinion than we know. It is the peculiar infelicity of Somerset's case (supposing him to have been innocent), that the only evidence in his favour is the absence of direct and conclusive evidence against him. Not a single fact was alleged at the trial, or has ever (so far as I know) been alleged since, which is at all difficult to reconcile with the supposition of his guilt. Nothing was proved or pretended in the nature of an *alibi*. He was always on the spot, always within reach, always in close and confidential correspondence with those who were certainly engaged in the murder. Nothing was brought forward which seemed to show that he was acting towards Overbury in a different spirit. We do not hear of any personal visit; nor of any earnest endeavour to ascertain his real condition, with a view to help or to prevent consequences worse than were intended; nor of any manifestation of surprise or regret at the event; nor of any anxiety to understand how it came about. It is true there is a letter to Dr. Craig, written by Somerset, informing him that whenever Overbury desires to see him "the King is pleased he shall go," and adding a request from himself that he will give him his best help, and as much of his company as he shall require;[2] and there is another letter from Northampton to the Lieutenant of the Tower apparently upon the same occasion. But this was by the King's order upon the direct application of Overbury's father to the King himself;[3] and *after* this, if old Mr. Overbury is to be believed, Somerset told him that petitions to the King for his son's release would hinder it, and advised him to send

[1] S. P. Dom. James I., vol. lxxxvii. no. 29.

[2] Amos, p. 166.

[3] See Northampton's letter to Helwysse; "*Old Mr. Overbury's petition* contained another request," etc.

no more. Now if in addition to this unfortunate absence of all direct evidence in his favour, Somerset's manner when confronted with the confession of Sir Robert Cotton showed (as the report seems to indicate) confusion and perplexity, it is possible that the Peers may have had reason enough for their verdict, although to us the evidence may not appear to justify it. We hold cheap the authority of the Judges and Juries of those times, because they proceeded so much upon depositions, without producing the witnesses in open Court, where their behaviour under cross-examination might have modified the effect of their testimony. And it is true that they would have been better able to judge if they had insisted more upon *vivâ voce* evidence. But we forget that in this very respect we are ourselves in a worse position to judge than they were. They had at any rate the advantage of seeing the prisoner and the Counsel, and could ask questions of them. In many cases, and notably in this of which we are speaking, they saw several of the witnesses. We on the contrary have *nothing* but depositions to go upon, and can ask questions of nobody. We may assume, if we will, that we are wiser and juster and more virtuous,—ourselves being the judges, of course we are,—but I do not see how we can assume that we know as much about the cases. And therefore though we may justly hesitate to accept *their* conclusions as conclusive, we ought, I think, to rest in scepticism, and not insist upon the substitution of our own.

And here I should have been content for my own part to leave this case, as requiring no further explanation. That Overbury was murdered in the manner described, and that the Countess was the chief procuress, there is no doubt at all. That Somerset and Northampton[1] were aiding and abetting, there is much reason to suspect, though to us no absolute proof. That the discovery of all this was brought about by a rumour, which led to inquiry, and was followed up with a laudable determination, springing from a natural intolerance of murder, to get to the bottom of it if possible,—is a supposition which involves no difficulty, and leaves nothing unaccounted for. What reason is there for supposing that there was anything behind? My own answer is that there is no reason at all. I do not myself believe that there *was* anything behind. But it is true that there was at the time a general *expectation* of further discoveries, and there has been a prevalent belief since that some guilty secret was then hushed up. What it was, the ingenuity of historians has exhausted itself in vain endeavours to conjecture. But the existence of such a

[1] I include Northampton, because those who accept Somerset's story as true, will find it difficult to refuse him the benefit of it.

belief is a fact which requires explanation, and the explanation I believe to be very simple.

7.

Franklin who, though a great villain, seems to have been a man of humour and no fool, had discovered, in the course of the examinations which he underwent, the soft place in Coke's head. Before his trial he had dropped into his ear some dark hint of a great Popish poison-plot; which worked so powerfully, that that wonderful announcement from the Bench, which I have already mentioned, of the narrow escape of Court, City, and the greater number of particular houses from the malice of that wicked crew, followed immediately. And when after his conviction Dr. Whiting was sent to "press his conscience," he allowed it to be delivered of the following confessions, as noted down by Coke himself, I presume from Dr. Whiting's report.

28 Die Nov.

The relation of Doctor Whightinge.

The Doctor conferring with Franklyn, and the Lord Treasurer being named, he said that he was as far in as himself.

He said further that the Lady of Somerset was the most impudent woman that lived, and there was no hoe with her.

He confessed that he said at the bar to some near to him, that there were greater persons in this matter than were yet known, and so in truth then said he there are; and that, although the Chief Justice hath found and sifteth out as much as any man could, yet that he is much awry, and has not come to the ground of the business; for more were to be poisoned and murdered than are yet known, and he marvelleth that they have not been poisoned and murdered all this while. He said further, that the man was not known that gave him the clyster, and that it was that did the deed.

I could have put the Chief Justice in the right way the first day I came to him, but now he hath put me in the right way to heaven.

And being asked whether he should not have had an hundred pounds to be employed to the Palsgrave and the Lady Elizabeth, answered An hundred! Nay five hundred. I will not say how much.

He saith that the Earl of Somerset and the Countess hath the most aspiring minds that ever were heard or read of.

He saith that the Earl of Somerset had a great book of policies and how to rise, which book Franklyn had once.

And saith that the Earl never loved the Prince nor the Lady Elizabeth. I could say more, but I will not.

Do not you marvel wherefore the King useth an outlandish physician

and an outlandish apothecary about him, and about the late Prince deceased? Therein (saith he) lieth a long tale.

Being told that the Queen had been extraordinarily sick and pained, and her young children taken away, said he, soft, I am not come to it yet.

I think next the gunpowder treason there was never such a plot as this is. I could discover knights, great men, and others. I am almost ashamed to speak what I know.

He could have confessed he had seen twenty letters from the Lieutenant to the Lady of Essex, whereof two he formerly confessed.

And Sir Thomas Mounson brought her word from the Lieutenant how Sir Thomas Overbury did, and so did one knight and another knight more.

If I cannot prove these things I should be ten thousand times more the son of the Devil than now I am; but God hath sent me now more grace than so to do.

It was said to him that it was not possible that so young a lady as the Lady Somerset should contrive such a plot without some helps. No, no (said he) who can think otherwise? for the Lady had no money, but the money was had from the old Lady, one day 200*l.* and another day 500*l.* for we wanted no money.

He gave a glance of Sir William Mounson for the bringing of an hundred pound for the feeding of the plot.

He said that there is one living about the town that is fit to be called in question about the pictures and the plot against the Earl of Essex.

I can make one discovery that should deserve my life.

He said he had some knowledge in all acts and villanies and knaveries in the world, but now he had recanted them and repented himself for them. He thanked God for it.

I could never find by any constellation or conjuration that I should be hanged; but therein the devil hath deceived me. FINIS.[1]

If Coke had contented himself with taking down these offers of information in order to see whether any light could be got out of them, and kept them in the meantime to himself, all would have been well. But though the bait seems coarse and clumsy, it was so well suited to his appetite that he seized it without examining and swallowed it without pausing. The note of these confessions is dated, we see, the 28th of November. On the 4th of December he made that other announcement from the Bench (which I have also mentioned) of a discovery that made "our deliverance as great as any that happened to the children of Israel;" adding (it is said) an obscure hint that he knew something about the death of "that sweet Prince Henry."

It was out of these hints, as I conceive, that all the mystery grew.

[1] S. P. Dom. James I., vol. lxxxiii. no. 74. Docketed by Coke "The Conference between the Doctor and Franklyn."

Hearing such sayings from the oracle on the Bench, no wonder that the people, whose imagination was now all awake and agape for horrors, believed that some horrible iniquity was presently to be brought to light. No wonder that when nothing came they supposed that it had for mysterious reasons been hushed up; that thereupon they employed themselves in dark conjectures, which begot a brood of dark rumours; and that when Coke, not many months after, was removed from the Bench, they remembered the hints which had fallen from him on this occasion, and concluded that he had forfeited the King's favour by seeing too far into his secrets. A little reflexion might indeed have told them that when a man like Coke becomes dangerous from knowing too much, to disgrace him without silencing him is the last thing upon which a King who feared him would venture. But people never trouble themselves on these occasions to reflect. All the rest was natural, and (as things appeared then) not unreasonable. Some great iniquity had been found out and hushed up. What? why? by whom? To the last question the answer was obvious: by the King: for who but the King had power to stop inquiry or forbid disclosure? And why should the King have stopped inquiry? Doubtless because he had done something which he did not wish to become known. And what was it then that the King had done, of which he so dreaded the discovery? This opened a wide field for conjecture. Any crime would do that was bad enough; and as there was no evidence to guide the guesser toward any one in particular, each chose the one he liked best; preference being generally given to that class of crimes which cannot be named; because in them evidence was less to be expected. With a general presumption like this against him, it would be hard for a man to get through his life without incurring suspicion of something in particular. And the King's conduct in the prosecution of this cause,—straightforward, open, and consistent as it was,—was found to supply some hints for the suspicious. In the first place, when Somerset returned from Royston to London after the appointment of the commission, the King (having heard Coke's opinion of the evidence, but not seen the evidence itself) took leave of him with his usual demonstrations of affection; but observed, as soon as he was gone, that he should never see his face more. In the second place, after Somerset had been examined by the Commissioners, and they had reported that the examinations and testimonies gave ground in their opinion for vehement suspicion that he had been an accessary to the murder before the fact, the King showed great anxiety to induce him to confess himself guilty, and caused private communications to be made to him as by authority, holding out hopes of

pardon if he would do so. In the third place, when Somerset declared to Sir George More that the King *durst not* bring him to trial, and seemed to threaten that if he did he would publicly "tax him" with something, the King did not treat this threat with indifference, but took counsel with his lawyers and judges as to the means of preventing him from putting it in execution. In the fourth place, on the day of trial it was observed at Court that when the news of the verdict reached Greenwich, the King, who had been restless and uneasy before,[1] recovered his usual composure. In the fifth place, though sentence of death was recorded in the usual form against both the Earl and the Countess, he spared their lives.

It will hardly be contended that these particular facts would justify any serious suspicion of any serious criminality, were it not for the previous assumption that something had been hushed up, and the fair inference that there was something to conceal. If that previous assumption were withdrawn, it would be found that there is no ground whatever for any such suspicion. And withdrawn, I think, it must be,—absolutely and unconditionally; as having a distinct, well-authenticated, and unbroken pedigree from nothing at all. The belief that something had been hushed up was the legitimate offspring of the belief that something of a dreadful nature had been discovered, which was never revealed. The belief that something of a dreadful nature had been discovered was the legitimate offspring of a public intimation to that effect from the Chief Justice of England. The intimation from the Chief Justice was the legitimate offspring (though an untimely birth) of his belief that he had discovered it. The belief that he had discovered it was the offspring (legitimate also, according to his own doctrine that the evidence of a man who accuses himself in his testimony is as strong as if on oath) of Franklin's liberal budget of confessions. And Franklin's budget of confessions was the natural offspring of his disinclination to be hanged sooner than he could help. Unless therefore there be any difficulty in believing that Franklin was a man who would tell a lie rather than be hanged, there is no reason for supposing that the iniquities he hinted at had any existence except in his own brain. By pretending to be able to disclose such things, he knew that he should at any rate *delay* his own execution. That his statements were false, we have

[1] The reporter, a very fair witness, describes him as "so extreme sad and discontented, as he did retire himself from all company, and did forbear both dinner and supper until he had heard what answer the said Earl had made." (Sherburn to Carleton, 31 May 1616.) But as we now know that Gondomar was a long time with him that day talking about the Spanish match ('Archæologia,' xli. p. 181), we must beware of concluding that the time of his retirement was all spent in guilty terror.

what may be regarded as positive evidence: for there are among our State Papers several examinations taken down in Coke's own hand, evidently suggested by Franklin's information, and aiming to elicit evidence in corroboration of it, which show that he had followed the scent with his usual zeal and diligence and found nothing. A few vague rumours and a few old wives' stories were all the return of his industry.

This general assumption being withdrawn, the facts which remain admit in my opinion of an easy and sufficient explanation. The King parted with Somerset at Royston in his ordinary manner, because (making a just distinction between accusation and guilt) he would not treat as guilty a man who had not even heard what he was accused of. He observed at the same time that he should never see his face more, because he feared, from what Coke had said, that the accusation would be justified by the evidence. After hearing the report of the Commissioners upon their first examinations of him, he was anxious, for the reasons which I have already stated and need not repeat, to induce him to confess his crime. When threatened with a counter-accusation against himself, he felt uneasy, because to one in his position such an accusation, however groundless, would have been at least extremely inconvenient. He refrained from carrying the sentence into execution, partly because he did not feel certain that it was just; partly because the utter ruin of so great a fortune was punishment sufficient for an example and a deterrent; and partly (perhaps chiefly) because he could not forget that the man had been for so many years his bosom-friend, and to order him out to an ignominious death was more than he could bring himself to:— a weakness perhaps; but a weakness which, if not respected, may at least be excused.

A complete discussion of his behaviour to Somerset during all this business would lead me too far away from my proper subject. If any reader wishes for further information as to the grounds upon which I dissent from many conclusions which have been commonly accepted, I must be content to refer him to a paper which I read to the Society of Antiquaries in March 1866, and which will be found in the forty-first volume of the 'Archæologia.'[1] But I cannot quit the subject without taking some notice of an elaborate and rather imposing treatise, devoted specially to the elucidation of it, in which an opposite view is taken of everything, and supported with a great show of diligence and learning.

[1] 'Review of the Evidence respecting the Conduct of King James I. in the case of Sir Thomas Overbury, in a letter to C. Knight Watson, Esq.'

8.

In the year 1846, the late Professor Amos published a volume entitled 'The Great Oyer of Poisoning,' which will probably continue, in virtue of a few merits to hold its place in legal and historical libraries, and in virtue of many defects to enjoy a reputation much more respectable than it deserves. Its merits consist in this, and I think in this only:—it contains several documents not to be found in print elsewhere, or not in a form so convenient to the reader. Though by no means well edited,—for they have been imperfectly read, inaccurately transcribed, carelessly printed, not seen (I should think) in proof by the author,[1] and set out in no order, without index or table of contents,—I have found these of great use. They are here gathered together into a portable volume, and after you have once corrected them from the originals you can use them instead. Among them is a reprint in better type of the report in the 'State Trials;' a copy of the manuscript report now at the Rolls House; and of several examinations, notes, and letters (chiefly Coke's), which have not been printed before. Its defects are a general want of arrangement, which makes it a tedious labour to discover what the writer is aiming at; an utter incapacity to perceive the conclusions which naturally follow from the premises; a blind partiality, disguised under an air of judicial gravity; and an extraordinary deficiency in that sense of probability, through which ordinary men understand that a supposition must be erroneous when the conclusion it leads to is what Euclid would have called absurd. These defects will help to maintain the reputation of the book above its proper level, because they will deter people from reading it through with attention. They will dip in here and there; and in turning over the leaves will meet with desultory remarks on subjects of all kinds, always expressed with sobriety and solemnity, and often very true; with moral censures pronounced against acts undoubtedly censurable, if committed; with

[1] E. g. 'Sir Christopher *Bland*' (for 'Blount') p. 64. 'Mr. Pawlins' (for 'Rawlins') p. 69. 'Sir Robert Hanton' (for 'Naunton') p. 477. 'Thoumball' (for Trumbull) p. 163. 'Examinant' (for Examinate) passim. 'Parasetis' p. 249. 'Ne pereat respublicâ' p. 368. 'Ignorates elenchi' p. 379. 'Tu scis, Domini, quod feci' p. 381. 'Venates' p. 487. '*περι πανιος την ελευθεριαν*' p. 501. 'But the *hour* of your Justice and the wickedness of the man is such as long continuance of his life cannot consist together.' (for 'but the wickedness of the man is such as the *honor* of your Justice and long continuance of his life cannot consist together') p. 391. 'Contrary to *the* expectation who thought he would *have stand* mute' p. 395. 'Never *deem* his Popery, though he were divers times *changed*' (for *deny* and *charged*) p. 396. 'Good *many* rejoice' (for *men*) p. 397. 'Who should *wrote* it' p. 398. 'Fiat plena et celeris justitia for all good. Men earnestly expect it.' (for 'all good men earnestly expect it') p. 400. 'So upon the *water* he was there but as a lackey' (for 'upon the matter') p. 414. 'To return a substantial and indifferent *writ*' (for 'Jury') p. 390. 'The little fishes *as* flies' p. 376. 'My fellows *&c* I have received' (for 'my fellows *and* I have received') p. 124.

much information (or what looks like it), historical, biographical, legal, and literary, brought in for the purpose of illustration; with discussions of evidence, apparently careful and diligent, really laborious and minute;—and they may easily go away with an impression that the book is solid and trustworthy, though unreadable. What the writer's contributions to the history of the Great Oyer are really worth can only be understood by following his arguments from the premises to the conclusion; which is not easily done, because they seldom come within sight of each other, and would require a man to spend more time over the book than the fruit would repay. I have myself however felt it my duty to spend a great deal of time over it, and the margins of my copy would furnish materials, if necessary, for the only complete answer which the case admits—namely a volume of notes commenting upon the several arguments as they occur, with reference to page and line. To meet the general argument (if argument it can be called) by a general answer, is impossible; because it is all abroad. It is like a straggling army, which you may march through in any direction, but cannot defeat, because it has no head. Meanwhile if there be any one who has a fancy to go into it, he will find it convenient to be warned beforehand what it is that the book has been written to prove: a thing hardly to be discovered from the book itself without reading it through more than once; and this I can supply in a short compass. It has been written to prove that the real procurer of the murder of Overbury was King James himself;—that the instrument he employed for the purpose was Sir Theodore Mayerne, the Court physician (who was also Overbury's):—that the Countess of Somerset was also engaged at the same time in an *ineffectual* attempt to poison him:—that the King, hearing of this some two years after, determined to make her and her agents his own scape-goats:—that accordingly he employed Coke and Bacon to get up a case against them, and manage the prosecution so as by fair means or foul to ensure a conviction:—that he or they then employed a clergyman to betray the victims into *false* confessions of their own guilt, and published to the world *false* reports of those confessions; as well as an official account of the trial in which the truth was misrepresented in every way,—by the omission of circumstances which were favourable to the prisoners, by the invention of circumstances which made against them, and by a general licence of "garbling:"—that the King's *motive* for poisoning Overbury was a fear lest Overbury might in discontent reveal certain secret and unnamable vices to which Professor Amos supposed that the King and Somerset and Overbury and Overbury's confidential servant were alike addicted:—that his motive for pardoning Somerset, after he

had by such means sufficiently established his guilt, was fear lest Somerset should in revenge or in self-defence disclose the fact that he was himself the murderer of Overbury :—and finally that James was just the sort of man to do such things.

Now if it be asked what desperate difficulty in the ascertained phenomena can have driven a respectable and very prosaic professor to take refuge in so complicated and so extravagant a hypothesis as this, the answer must be that it was only the old difficulty of explaining why James showed so much uneasiness while Somerset's threat to "tax him" with something was hanging over him. Yet surely this is a phenomenon which can be understood and accounted for without assuming for that purpose (upon no evidence whatever except the supposed difficulty of accounting for it in any other way)

1st. That James and Somerset were guilty of certain secret unmentionable vices.

2nd. That Somerset and Overbury were guilty of similar secret unmentionable vices.

3rd. That James knowing that Overbury knew him to be guilty of the said vices, and fearing that he might reveal them, desired to have him killed.

4th. That for that purpose he employed Sir Theodore Mayerne, the principal Court physician (and a man never suspected before of any crime worse than an unskilful prescription), to poison him.

5th. That having accomplished this object, and so skilfully that not a shadow of suspicion had fallen upon him, and hearing accidentally two years after that an unsuccessful attempt to poison Overbury had been made exactly at the same time by other parties, he determined to free himself from all fear of being suspected, by the audacious experiment of bringing those other parties to trial and having them found guilty of the crime which he had himself committed.

6th. That whereas a second instrument was necessary for the accomplishment of this second murder—or rather series of murders—he selected for that service the most *un*subservient, intractable, self-willed, contradictious and indiscreet man in his dominions—Sir Edward Coke—a man whose pride was in his reputation for probity and independence, and who was as staunch as a bloodhound in hunting out evidence :—that he selected this man for his instrument, and set him upon the scent, with full liberty and encouragement to follow it out in his own way.

7th. (which is as wonderful as any of the rest) that he found in this man a *willing* instrument and accomplice; and by his help (for if it was true that Overbury had been poisoned by the pro-

curement of the King, it was impossible that Coke so commissioned should fail to find it out) got as many of the parties hanged as suited his purpose, and all evidence tending to throw suspicion on himself suppressed, destroyed, or evaded.

8th. That all this was done, yet that nothing ever transpired afterwards to betray any part of it.

Surely the man who finds it easier to believe all this than to believe that a King, being threatened by a former bosom-favourite with the public imputation of some odious crime, would feel *uneasy* about it, is a man who finds it easier to swallow eight camels than to attempt one gnat.

How far Bacon was an accomplice in all this, Professor Amos does not distinctly say; though a long chapter is devoted to him, in which his conduct is minutely criticised and found of course to be a continuous series of basenesses. I have carefully considered all the charges, but not found any that seem worth answering. And as the whole of the evidence is before the reader, I leave him to make his comments for himself.

CHAPTER IX.

A.D. 1616. ÆTAT. 56.

1.

This great cause being thus settled,—fortunately settled, I should say; for the carriage of it bred no trouble to the living, and the criticisms of Posterity cannot disturb the dead,—the next care was to settle the differences between the Courts of law; which having only been adjourned for a few weeks were presently to come up again. The indictment of Præmunire against the Chancery had failed in February, because the Grand Jury returned an *ignoramus:* but Coke had encouraged the plaintiffs to try again, promising them a better Jury another time. The argument of the Judges upon the Commendam case had been adjourned in the beginning of May till the second Saturday of the next term, which would be the 8th of June; so there was little time to spare. But the learned counsel had not been asleep in the interval, and everything was ready.

To strengthen himself for the encounter, Bacon again reminded Villiers of his suit to be made a Privy Councillor; which was still under consideration. The result will be seen in the two next letters; which come from his own collection.

A letter to Sir G. Villiers touching his swearing Councillor. 30 May 1616.[1]

Sir,

The time is as I should think now or never for his Majesty to finish his good meaning towards me, if it please him to consider what is past and what is to come.

If I would tender my profit and oblige men unto me by my place and practice, I could have more profit than I can desire, and could oblige all the world and offend none; which is a brave

[1] Gibson Papers, vol. viii. f. 33. Copy. Docketed in Bacon's hand as in the heading.

condition for a man's private. But my heart is not on these things. Yet on the other side, I would be sorry that worthless persons should make a note that I get nothing but pains, and enemies, and a little popular reputation which followeth me whether I will or no. If anything be to be done for yourself, I should take infinite contentment that my honour mought wait upon yours. But I would be loth it should wait upon any man's else. If you would put your strength to this business, I know it is done. And that done many things more will begin. God keep you ever. I rest

Your true and devoted servant,

FR. BACON.

30 May, 1616.

A LETTER TO SIR G. VILLIERS UPON THE CHOICE HIS M. GAVE HIM, WHETHER HE WOULD BE SWORN COUNCILLOR, OR HAVE ASSURANCE TO SUCCEED THE CHANCELLOR. 3 JUNE 1616.[1]

Sir,

The King giveth me a noble choice, and you are the man my heart ever told me you were. Ambition would draw me to the later part of the choice. But in respect of my hearty wishes that my Lord Chancellor may live long, and the small hopes I have that I shall live long myself, and above all because I see his Majesty's service daily and instantly bleedeth, towards which I persuade myself, (vainly perhaps) but yet in mine own thoughts firmly and constantly, that I shall give when I am of the table some effectual furtherance (as a poor thread of the labyrinth which hath no other virtue but an united continuance without interruption or distraction), I do accept of the former, to be councillor for the present, and to give over pleading at bar; let the other matter rest upon my proof, and his Majesty's pleasure, and the accidents of time. For to speak plainly I would be loth that my Lord Chancellor, to whom I owe most after the King and yourself, should be locked to his successor, for any advancement or gracing of me. So I ever remain

Your true and most devoted

and obliged servant,

FR. BACON.

3 Junii 1616.

[1] Gibson Papers, vol. viii. f. 34. Copy in Bacon's hand: docketed as in the heading.

It was not till the 9th of June that Bacon took the oath of a Privy Councillor. In the meantime he submitted to the King a memorial of the course he wished him to take for the settlement of these questions of jurisdiction: which was, to have them both laid formally before the Council,—discussed, decided, and the decision solemnly recorded. The memorial was first printed by Robert Stephens in his 'Letters and Memoires of Sir Francis Bacon,' published in 1702, and commonly referred to as his "first collection." The original (from which it professes to be copied) I have not met with. But where I have had the opportunity of comparing Stephens's copies with the manuscripts from which they were taken, I have found them so accurate that I consider them almost as good as originals.

This paper bears no date. But as Saturday the 8th of June (the day to which the cause had been adjourned) is spoken of as "Saturday next," and the proceeding before the Council which it recommends actually took place on Thursday the 6th, it cannot be dated either earlier than the 1st of June, or much later.

A MEMORIAL FOR HIS MAJESTY. COPIED FROM THE ORIGINAL, CORRECTED, IN A PLACE OR TWO, WITH SIR FRA. BACON'S OWN HAND.[1]

It seemeth this year, of the fourteenth of his Majesty's reign, being a year of a kind of majority in his government, is consecrate to justice.[2] Which as his Majesty hath performed to his subjects in this late memorable occasion, so he is now to render and perform to himself, his crown and posterity.

That his Council shall perceive by that which his Majesty shall now communicate with them, that the mass of his business is continually prepared in his own royal care and cogitations, howsoever he produceth the same to light and to act *per opera dierum.*

That his Majesty shall make unto them now a declarative of two great causes, whereof he doubteth not they have heard by glimpses; the one concerning his high Court of Chancery, the other concerning the Church and prelacy; but both of them

[1] Stephens's first collection, p. 140.

[2] By the laws, several ages are assigned to persons for several purposes. And by the common law the fourteenth year is indeed a kind of majority, and accounted an age of discretion. At that time the man may agree or disagree to a precedent marriage: the heir in socage may reject the guardian appointed by law, and choose a new one: and the woman at that age shall be out of ward, *etc.* (*Note by Stephens.*)

deeply touching his prerogative and sovereignty, and the flowers of his crown.

That about the end of Hilary term last, there came to his Majesty's ears, only by common voice and report, not without great rumour and wonder, that there was somewhat done in the King's Bench the last day of that term, whereby his Chancery should be pulled down, and be brought in question for *præmunire;* being the most hainous offence after treason and felony and misprision of treason; and that the time should be when the Chancellor lay at the point of death.

That his Majesty was so far from hearing of this by any complaint from his Chancellor (who then had given over worldly thoughts,) that he wrote letters of comfort to him upon this accident, before he heard from him; and for his Attorney, his Majesty challenged him for not advertising him of that of which it was proper for his Majesty to be informed from him.

That his Majesty being sensible of this so great novelty and perturbation in his courts of justice, nevertheless used this method and moderation, that before he would examine this great affront and disgrace offered to his Chancery and Chancellor, he would first inform himself whether the Chancery or Chancellor were in fault; and whether the former precedents of Chancery did warrant the proceedings there after judgment passed at common law (which was the thing in question); and thereupon his Majesty called his learned counsel to him, and commanded them to examine the precedents of Chancery, and to certify what they found: which they did; and by their certificate it appeareth, that the precedents of that kind were many, and precise in the point, and constant, and in good times, and allowed many times by the Judges themselves.

That after this his Majesty received from the Lord Chancellor a Case, whereby the question was clearly set down and contained within the proper bounds of the present doubt; being, *Whether upon apparent matter of equity, which the Judges of the law by their place and oath cannot meddle with or relieve, (if a judgment be once passed at common law) the subject shall perish, or that the Chancery shall relieve him; and whether there be any statute of* præmunire *or other, to restrain this power in the Chancellor;* which case, upon the request of the Lord Chancellor, his Majesty likewise referred to his learned counsel, (and the Prince's

attorney Mr. Walter was joined with them,) who, upon great advice and view of the original records themselves, certified the Chancery was not restrained by any statute in that case.

That his Majesty again required his learned counsel to call the clerks of the King's Bench to them, and to receive from them any precedents of indictments in the King's Bench against the Chancery for proceeding in the like case; who produced only two precedents, being but indictments offered or found, upon which there was no other proceeding; and the clerks said they had used diligence and could find no more.

That his Majesty, after he had received this satisfaction that there was ground for that the Chancery had done, and that the Chancery was not in fault, he thought then it was time to question the misdemeanour and contempt in scandalizing and dishonouring his justice in that High Court of Chancery in so odious a manner; and commanded his Attorney-general, with the advice of the rest of his learned counsel, to prosecute the offenders in the Star-chamber, which is done; and some of them are fled, others stand out and will not answer.

That there resteth only one part more towards his Majesty's complete information in this cause: which is to examine that which was done in open court the said last day of Hilary term, and whether the Judges of the King's Bench did commit any excess of authority, or did animate the offenders otherwise than according to their duty and place; which inquiry, because it concerneth the Judges of a court, (to keep order and decorum) his Majesty thinketh not so convenient to use his learned counsel therein, but will commit the same to some of the council-table, and his learned counsel to attend them.

This declared, or what else his Majesty in his own high wisdom shall think good, it will be fit time to have the certificate of the learned counsel openly read.

His Majesty may, if he please, forbear to publish at this time at the table the committees; but signify his pleasure to themselves afterwards.

The committees named by his Majesty, were the Archbishop of Canterbury, Secretary Lake, the Chancellor of the Exchequer, and the Master of the Rolls.

This report is to be prefixed, to be given in by Wednesday at night, that his Majesty may communicate it with his Council,

and take further order on Thursday thereupon, if his Majesty be so pleased.

At this declaration, it is his Majesty's direction (to the end things may appear to be more evenly carried) that neither my Lord Chancellor nor my Lord Chief Justice be present.

But then when his Majesty entereth into the second declarative, my Lord Chancellor is to be called for: but my Lord Chief Justice not; because it concerneth him.

For the second declarative: that his Majesty hath reason to be offended and grieved, in that which passed touching the Commendams, both in matter and manner: for the matter, that his Majesty's religious care of the Church and of the Prelacy, and namely, of his Lords Spiritual the Bishops, may well appear, first, in that he hath utterly expelled those sectaries or incomformable persons that spurned at the government; secondly, that by a statute made in the first year of his reign, he hath preserved their livings from being wasted and delapidate by long leases, and therein bound himself and his crown and succession; and lastly, that they see two Bishops privy councillors at the table, which hath not been of late years.

That agreeably to this his Majesty's care and good affection, hearing that there was a case of the Bishop of Lincoln's, wherein his Majesty's supreme power of granting Commendams (which in respect of the exility of bishopricks is sometimes necessary) was questioned to be overthrown or weakened; he commanded his Attorney-general, not only to have care to maintain it according to his place, but also that he should relate to his Majesty how things passed; and did also command the Bishop of Winchester to be present at the public argument of the case; and to report to his Majesty the true state of that question, and how far it extended.

This being accordingly done; then upon report of the Bishop of Winchester in the presence of the Lord Chancellor, his Majesty thought it necessary, that before the Judges proceeded to declare their opinion they should have conference with his Majesty, to the end to settle some course, that justice might be done, and his regal power (whereof his crown had been so long vested) not touched nor diminished. And thereupon commanded his Attorney (who by his place ought properly to sig-

nify his Majesty's pleasure to his Judges, as his Secretary doth to his Privy Council,) in the presence of the Lord Chancellor and the Bishop, to signify his pleasure to the Judges, that because his Majesty thought it needful to consult with them in that case before they proceeded to judgment; and that his Majesty's business (as they all knew) was very great, and Midsummer term so near at hand, and the cause argued by his Attorney so lately, they should put off the day till they might advise with his Majesty at his next coming to town. That his Majesty's Attorney signified so much by his letters (the next day after he had received his commandment) to all the Judges, and that in no imperious manner, but alledging the circumstances aforesaid, that the case was lately argued, his Majesty's business great, another term at hand, *etc.*

Now followeth the manner that was held in this, which his Majesty conceiveth was not only indiscreet, but presumptuous and contemptuous.

For first, they disobeyed this his Majesty's commandment, and proceeded to public argument notwithstanding the same; and thought it enough to certify only their mind to his Majesty.

Secondly, in a general letter under all their hands (howsoever it may be upon divided opinion) they alledge unto his Majesty their oath; and that his Majesty's commandment (for the Attorney's letter was but the case that it was wrapped in) was against law; as if maturity and a deliberate proceeding were a delay, or that commandment of stay in respect of so high a question of state and prerogative, were like a commandment gotten by importunity, or in favour of a suitor.

Thirdly, above all, it is to be noted and justly doubted, that upon the contrary in this that they have done they have broken their oath; for their oath is to counsel the King when they shall be called; and if when the King calleth them to counsel, they will do the deed first, and give him counsel after, this is more than a simple refusal.

Lastly, it is no new thing upon divers particular occasions, of a far higher nature than the consulting with their sovereign about a cause of great moment, to put off days, and yet no breach of oath. And there was another fair passage well known to my Lord Coke, that he might have used if it had pleased him; for that very day was appointed for the King's great cause

in the Chancery, both for my lord Hobart and him; which cause ought to have had precedence afore any private cause, as they would have this seem to be.

To this letter his Majesty made a most princely and prudent answer, which I leave to itself.

Upon this declaration his Majesty will be pleased to have the Judges' letter and his own letter read.

Then his Majesty (for his part as I conceive) will be pleased to ask the advice of his Council as well for the stay of the new day, which is Saturday next, as for the censure and reproof of the contempt passed: for though the Judges are a reverend body, yet they are (as all subjects are) corrigible.

2.

Substantially these suggestions were approved and acted upon. But since it was important to get the question concerning the Commendams settled before the following Saturday, whereas the indictment against the Chancery was not likely, in face of the proceedings which had been taken in the Star Chamber, to be preferred again at present, it was thought best to take the Commendam case first and deal with it alone for that time. Accordingly, on Thursday the 6th of June, a Council was held for this purpose at Whitehall, all the Judges attending; at which Council the point in dispute was fully explained and discussed, the opinion and advice of the Council formally taken, and the Judges (with an important exception in the person of Coke, who rather evaded the question than refused to concur) admitted their error and agreed in future to take the course for which the King contended. A full and particular report of the proceedings will be found a little further on in the Act of Council which Bacon drew up and sent to the King for approval a few days after.

In the meantime a report upon a petition for a monopoly-patent, which had been referred to him as Attorney-General, comes in here by right of date; and though the patent itself did not (so far as I know) give rise to any question of historical importance, Bacon's manner of dealing with it is not without interest, as bearing upon the general question of his connexion as referee with those monopolies which caused so great a commotion in the next Parliament, immediately before his fall; with which, indirectly, they had perhaps a good deal to do. It would be premature to enter into any discussion of that question at present, but we shall be the better prepared to understand his position with regard to it hereafter, if we take no-

tice as we go of the manner in which such questions came before him in the way of ordinary business, and the spirit in which he was in the habit of dealing with them. Mr. Gardiner maintains that an erroneous principle of political economy was at the bottom of his action in that matter, and that the only monopolies which he favoured were those which he believed to be for the good of the public: and (without committing myself, as at present advised, quite so far as that) I invite the reader to watch and observe as we proceed whether he ever reports in favour of a monopoly which there is reason to believe he thought injurious to the public.

To the King.[1]

It may please your excellent Majesty,

According to your Majesty's reference signified by Sir Roger Wilbraham, I have considered of the petition of Sir Gilbert Houghton, your Majesty's servant, for a licence of sole transportation of Tallow, Butter, and Hides, etc. out of your realm of Ireland; and have had conference with the Lord Chichester, late Lord Deputy of Ireland, and likewise with Sir John Davies, your Majesty's Attorney there: And this is that which I find:

First, that Hides and Skins may not be meddled withal, being a staple commodity of the kingdom, wherein the towns are principally interessed.

That for Tallow, Butter, Beef (not understanding it of live cattle), and Pipe-staves, (for upon these things we fell, although they were not all contained in the petition, but in respect Hides were more worth than all the rest, they were thought of by way of some supply), these commodities are such as the kingdom may well spare, and in that respect fit to be transported; wherein nevertheless some consideration may be had of the profit that shall be taken upon the licence. Neither do I find that the Farmers of the Customs there, of which some of them were before me, did much stand upon it, but seemed rather to give way to it.

I find also that at this time all these commodities are free to be transported by proclamation, so as no profit can be made of it, except there be first a restraint; which restraint I think fitter to be by some prohibition in the letters patents, than by any

[1] Add. MSS. 4259, f. 161. Orig.

new proclamation; and the said letters patents to pass rather here than there, as it was in the Licence of Wines granted to the Lady Arbella; but then those letters patents to be inrolled in the Chancery of Ireland, whereby exemplifications of them may be taken to be sent to the ports.

All which nevertheless I submit to your Majesty's better judgment.

Your Majesty's most humble
bounden subject and servant,
FR. BACON.

Junii 5°, 1616.

3.

By the 12th of June Bacon was ready with his report of the proceedings in Council on the 6th, and in the following letter to Villiers enclosed a draft of it for the King's approval.

To SIR GEORGE VILLIERS.[1]

Sir,

I send his Majesty a draught of the Act of Council concerning the Judges' letter, penned as near as I could to his Majesty's instructions, received in your presence. I then told his Majesty my memory was not able to keep way with his; and therefore his Majesty will pardon me for any omissions or errors, and be pleased to supply and reform the same.

I am preparing some other materials for his Majesty's excellent hand, concerning business that is coming on: for since his Majesty hath renewed my heart within me, methinks I should double my former endeavours. God ever preserve and prosper you. I rest

Your most devoted and bounden servant,
FR. BACON.

12th of June 1616.

The Act of Council itself was printed by Robert Stephens in his first collection; but from a very incorrect copy. It is here corrected from a copy now among the Lansdowne MSS., which appears to have belonged to Sir Julius Cæsar; by whom it is described (in the table

[1] Gibson Papers, vol. viii. f. 36. Fair copy, in Bacon's hand.

of contents to the volume) as "The Cause touching the Commendams, handled and ordered before the Lords of the P. Council, 1616."

In 1791, a copy appeared in the *Collectanea Juridica* which professed to have been collated with the original entry in the Council Book. But I suspect that the collation has not been very carefully made.

AT WHITEHALL THE SIXTH OF JUNE, ANNO 1616.[1]

Present:

The KING'S MAJESTY.

Lord Archbishop of Canterbury.	Lord Knollys.
Lord Chancellor.	Lord Wotton.
Lord Treasurer.	Lord Stanhope.
Lord Privy-Seal.	Mr. Vice-Chamberlain.
Lord Steward.	Mr. Secretary Winwoode.
Lord Chamberlain.	Mr. Secretary Lake.
L. Visct. Fenton.	Mr. Chancellor of the Exchequer.
Lo : Bishop of Winchester.	
Lord Zouch.	Master of the Rolls.

His Majesty having this day given order for a meeting of the Council, and that all the Judges (being twelve in number) should be sent for to be present; when the Lords were set, and the Judges ready attending, his Majesty came himself in person to Council, and opened to them the cause of that assembly; which was: That he had called them together concerning a question that had relation to no private person, but concerned God and the King; the power of the Crown; and the state of his Church whereof he was Protector; and that there was no fitter place to handle it than at the head of his Council-table: That there had been a question pleaded and argued concerning Commendams, the proceedings wherein had either been mishandled or misreported; for his Majesty a year since had received advertisements concerning that case in two extremes: By some, that it did trench far into his Prerogative Royal in the general power of granting Commendams; and by others that the doubt rested only upon a special nature of a Commendam, such as in respect of the in-

[1] Lansd. MSS. vol. clxxiv. f. 217.

congruity and exorbitant form thereof might be questioned, without impeaching or weakening the general power at all.

Whereupon his Majesty, willing to know the true state thereof, commanded the Lord Bishop of Winchester and Mr. Secretary Winwoode to be present at the next argument, and to report the state of the question and proceedings unto his Majesty. But Mr. Secretary Winwoode being absent by occasion, the Lord of Winchester only was present, and gave information to his Majesty of the particulars thereof, which his Majesty commanded him to report to the board.

Whereupon the Lord of Winchester stood up and reported, that Serjeant Chibborne (who argued the case against the Commendams) had maintained divers positions and assertions very prejudicial to his Majesty's prerogative royal.

As first, that the translation of Bishops was against the canon law, and for authority vouched the canons of the Council of Sardis.

That the King had no power to grant Commendams, but in case of necessity.

That there could be no necessity, because there was no need of augmentation of livings, for no man was bound to keep hospitality above his means.

Besides many other parts of his argument tending to the overthrow of his Majesty's prerogative in cases of Commendam.

The Lord of Winchester having made this report, his Majesty resumed his former narrative, letting the Lords know, that after the Lord of Winchester had made unto his Majesty a report of that which passed at the argument of the case, like in substance unto that which now had been made, his Majesty apprehending the matter to be of so high a nature, commanded his Attorney-general to signify his Majesty's pleasure to the Lord Chief Justice; That in regard of his Majesty's other most weighty occasions, and for that his Majesty held it necessary (upon the Lord of Winchester's report) that his Majesty be first consulted with before the Judges proceeded to argument, therefore the day appointed for the Judges' argument should be put off till they might speak with his Majesty; and this letter of his Majesty's Attorney was by his Majesty's commandment openly read; which follows, *in hæc verba.*

My Lord,

It is the King's express pleasure, That because his Majesty's times would not serve to confer with your Lordship and his Judges, touching the case of Commendams at his last being in town, in regard of his Majesty's other most weighty occasions; And for that his Majesty holdeth it necessary, upon the report which my Lord of Winchester (who was present at the last argument by his Majesty's royal commandment) made to his Majesty, that his Majesty be first consulted with, ere there be any further proceeding by argument of any of the Judges, or otherwise: Therefore that the day appointed for the further proceeding by argument of the Judges in that case be put off, till his Majesty's further pleasure be known upon consulting with him. And to that end, that your Lordship forthwith signify his commandment to the rest of the Judges: whereof your Lordship may not fail. And so I leave your Lordship to God's goodness.

Your Lp's loving friend to command,

Fr. Bacon.

This Thursday at afternoon,
the 25th day of April, 1616.

That upon this letter received, the Lord Chief Justice returned word to his Majesty's said Attorney by his servant; That it was fit the rest of his brethren should understand his Majesty's pleasure immediately by letters from his said Attorney to the Judges of the several benches, and accordingly it was done. Whereupon all the said Judges assembled, and by their letter under their hands certified his Majesty, That they held those letters (importing the signification aforesaid) to be contrary to law, and such as they could not yield to the same by their oath; and that thereupon they had proceeded at the day, and did now certify his Majesty thereof. Which letter of the Judges his Majesty also commanded to be openly read; the tenor whereof followeth, *in hæc verba.*

Most dread and most gracious Sovereign,

It may please your most excellent Majesty to be advertised, that this letter inclosed was delivered to me your Chief Justice on Thursday last in the afternoon, by a servant of your Majesty's Attorney-general; and letters of like effect were on the day following sent from him by his servant to us your Ma-

jesty's other Justices of every of the courts at Westminster. We are and ever will be ready with all faithful and true hearts, according to our bounden duties, to serve and obey your Majesty, and think ourselves most happy to spend our lives and abilities to do your Majesty true and faithful service. In this present case mentioned in this letter, what information hath been made unto you (whereupon Mr. Attorney doth ground his letter) from the report of the Bishop of Winchester, we know not. This we know, that the true substance of the case summarily is thus. It consisteth principally upon the construction of two acts of parliament, the one of the twenty-fifth year of K. Edw. III. and the other of the twenty-fifth of K. Hen. VIII. whereof your Majesty's Judges upon their oaths, and according to their best knowledge and learning, are bound to deliver the true understanding faithfully and uprightly. And the case is between subjects for private interest and inheritance, earnestly called on for justice and expedition. We hold it our duties to inform your Majesty, that our oath is in these express words: That in case any letters come unto us contrary to law, that we do nothing by such letters but certify your Majesty thereof, and go forth to do the law, notwithstanding the same letters. We have advisedly considered of the said letter of Mr. Attorney, and with one consent do hold the same to be contrary to law, and such as we could not yield to the same by our oath: assuredly persuading ourselves that your Majesty being truly informed, that it standeth not with your royal and just pleasure to give way to them. And therefore knowing your Majesty's zeal to justice, and to be most renowned therefore, we have, according to our oaths and duties, (at the day openly prefixed the last term,) proceeded, and thereof certified your Majesty; and shall ever pray to the Almighty for your Majesty in all honour, health and happiness long to reign over us.

Your M.s most humble and faithful
subjects and servants,
Edw. Coke, Henry Hobart, Law. Tanfield, P. Warberton, Geo. Snigge, Ja. Altham, Ed. Bromley, Jo. Croke, Hump. Winche, Jo. Doddridge, Augustine Nicolls, Rob. Houghton.

Serjeant's-Inn,
27 April.

His Majesty having considered of this letter, by his princely letters returned answer, reporting himself to their own knowledge and experience, what princely care he had ever had since his coming to the crown, to have justice duly administered to his subjects with all possible expedition; and how far he was from crossing or delaying of justice, where the interest of any private party was questioned: but on the other side expressing himself, that where the case concerned the high powers and prerogatives of his crown, he would not endure to have them wounded through the sides of a private person: admonishing them also of a custom lately entertained, of a greater boldness to dispute the high points of his Majesty's prerogative in a popular and unlawful liberty of argument, more than in former times: and making them perceive also how weak and impertinent the pretence or allegation of their oath was in a case of this nature, and how well it might have been spared; with many other weighty points in the said letter contained: which letter also by his Majesty's commandment was publicly read, and followeth *in hæc verba.*

James R.,

Trusty and well-beloved councillor, and trusty and well-beloved, we greet you well. We perceive by your letter, that you conceive the commandment given you by our Attorney-general in our name to have proceeded upon wrong information: But if ye list to remember what princely care we have ever had, since our coming to this crown, to see justice administered to our subjects with all possible expedition, and how far we have ever been from urging the delay thereof in any sort, ye may easily persuade yourselves that it was no small reason that moved us to send you that direction. Ye might very well have spared your labour in informing us of the nature of your oath. For although we never studied the common law of England, yet are we not ignorant of any points which belong to a King to know: We are therefore to inform you hereby, that we are far from crossing or delaying any thing which may belong to the interest of any private parties in this case; But we cannot be contented to suffer the prerogative royal of our crown to be wounded through the sides of a private person: We have no care at all which of the parties shall win his process in this case, so that right prevail, and

that justice be truly administered; but on the other part, we have reason to foresee that nothing be done in this case which may wound our prerogative in general. And therefore so that we may be sure that nothing shall be debated amongst you which may concern our general power of giving Commendams, we desire not the parties to have an hour's delay of justice: But that our prerogative should not be wounded in that regard for all times hereafter, upon pretext of a private party's interest, we sent you that direction; which we account to be wounded as well if it be publicly disputed upon, as if any sentence were given against it: We are therefore to admonish you, that since the prerogative of our crown hath been more boldly dealt withal in Westminster-Hall during the time of our reign, than ever it was before in the reigns of divers princes immediately preceding us, that we will no longer endure that popular and unlawful liberty; and therefore were we justly moved to send you that direction to forbear to meddle in a case of so tender a nature, till we had further thought upon it. We have cause indeed to rejoice of your zeal for the speedy execution of justice. But we would be glad that all our good subjects might so find the fruits thereof, as that no pleas before you were of older dates than this is. But as to your argument which you found upon your oath, you give our predecessors who first founded that oath a very uncharitable meeting, in perverting their intention and zeal to justice, to make a weapon of it to use against their successors. For although your oath be, that you shall not delay justice betwixt any private parties, yet was it not meant that the King should thereby receive harm, before he be forewarned thereof: neither can ye deny, but that every term ye will out of your own discretions, for reasons known unto you, put off either the hearing or determining of an ordinary cause betwixt private persons till the next term following. Our pleasure therefore is, who are the head and fountain of justice under God in our dominions, and we out of our absolute power and authority royal do command you, that you forbear to meddle any further in this plea till our coming to town, and that out of our own mouth you may hear our pleasure in this business; which we do out of the care we have that our prerogative may not receive an unwitting and indirect blow, and not to hinder justice to be administered

to any private parties, which no importunity shall persuade us to move you in, like as only for avoiding the unreasonable importunity of suitors in their own particular, that oath was by our predecessors ordained to be ministered unto you. So we heartily wish you well to fare.

Postscript. You shall upon receipt of this letter call our Attorney-general unto you, who will inform you of the particular points which we are unwilling shall be publicly disputed in this case.

This letter being read, his Majesty resorted to take into his consideration the parts of the Judges' letter and other their proceedings in that cause, and the errors therein committed and contained; which errors his Majesty did set forth to be both in matter and manner. In matter, as well by way of omission as commission; for omission, that it was a fault in the Judges, that when they heard a counsellor at the bar presume to argue against his Majesty's prerogative, (which in this case was in effect his supremacy,) they did not interrupt and reprove sharply that loose and bold course of disaffirming or impeaching things of so high a nature by discourse; especially since his Majesty had observed that ever since his coming to the crown, the popular sort of lawyers have been the men that most affrontedly in all Parliaments have trodden upon his prerogative: which being most contrary to their vocation of any men, since the law nor lawyers can never be respected if the King be not reverenced, it therefore best became the Judges of any, to check and bridle such impudent lawyers, and in their several benches to disgrace them that bear so little respect to their King's authority and prerogative: that his Majesty had a double prerogative, whereof the one was ordinary and had relation to his private interest, which might be, and was every day, disputed in Westminster-Hall; the other was of an higher nature, referring to his supreme and imperial power and sovereignty, which ought not to be disputed or handled in vulgar argument: but that of late the courts of common law were grown so vast and transcendent, as they did both meddle with the King's prerogative, and had incroached upon all other courts of justice; as the High Commission, the Councils established in Wales and at York, the Court of Requests.

Concerning that which might be termed commission, his Ma-

jesty took exception at the Judges' letter both in matter and form: for matter, his Majesty did plainly demonstrate, that whereas it was contained in the Judges' letter, that the signification of his Majesty's pleasure as aforesaid was contrary to law, and not agreeable to the oath of a Judge; that could not be: first, for that the putting off hearing or proceeding upon a just and necessary cause, is no denying or delay of justice, but a wisdom and maturity of proceeding: and that there cannot be a more just and necessary cause of stay, than the consulting with the King, where the cause concerns the crown; and that the Judges did daily put off causes upon lighter occasions: and likewise his Majesty did desire to know of the Judges, how his calling them to consult with him was contrary to law, which they could never answer unto.

Secondly, That it was no bare supposition or surmise, that this case concerned the King's prerogative; for that it had been directly and plainly disputed at the bar; and the very disputing thereof in a public audience is both dangerous and dishonourable to his Majesty.

Thirdly, That the manner of putting off which the King required, was not infinite nor for long time, but grounded upon his Majesty's weighty occasions, which were notorious; by reason whereof he could not speak with the Judges before the argument; and that there was a certain expectation of his Majesty's return at Whitsuntide: and likewise that the case had been so lately argued, and could not receive judgment till Easter term next, as the Judges themselves afterwards confessed.

And lastly, because there was another just cause of absence for the two Chief Justices; for that they ought to have assisted the Lord Chancellor the same day in a great cause of the King's followed by the Lord Hunsdon against the Lord William Howard in Chancery; which cause of the King's, (specially being so weighty,) ought to have had precedence before any cause betwixt party and party.

Also whereas it was contained in the Judges' letter that the case of Commendams was but a case of private interest between party and party, his Majesty shewed plainly the contrary; not only by the argument of Serjeant Chibborne, which was before his commandment, but by the argument of the Judges themselves (namely Justice Nicolls) which was after; but specially since

one of the parties is a Bishop who pleads for the Commendam only by the virtue of his Majesty's prerogative.

Also, whereas it was contained in the Judges' letter, that the parties called upon them earnestly for justice, his Majesty conceived it to be but pretence; urging them to prove that there was any solicitation by the parties for expedition, otherwise than in an ordinary course of attendance; which they could never prove.

As for the form of the letter, his Majesty noted that it was a new thing, and very undecent and unfit, for subjects to disobey the King's commandment, but most of all to proceed in the meantime, and to return to him a bare certificate; whereas they ought to have concluded with the laying down and representing of their reasons modestly unto his Majesty, why they should proceed; and so to have submitted the same to his princely judgment, expecting to know from him whether they had given him satisfaction.

After this his Majesty's declaration, all the Judges fell down upon their knees, and acknowledged their error for matter of form, humbly craving his Majesty's gracious favour and pardon for the same.

But for the matter of the letter, the Lord Chief Justice of the King's Bench entered into a defence thereof; the effect whereof was, That the stay required by his Majesty was a delay of justice, and therefore contrary to law and the Judges' oath; and that the Judges knew well amongst themselves, that the case (as they meant to handle it) did not concern his Majesty's prerogative of grant of Commendams: and that if the day had not held by the not coming of the Judges, the suit had been discontinued, which had been a failing in justice, and that they could not adjourn it, because Mr. Attorney's letter mentioned no day certain, and that an adjournment must always be to a day certain.

Unto which answer of the Chief Justice his Majesty did reply, that for the last conceit, it was mere sophistry, for that they mought in their discretions have prefixed a convenient day, such as there mought have been time for them to consult with his Majesty before the same, and that his Majesty left that point of form to themselves.

And for that other point, that they should take upon them

peremptorily to discern whether the case concerned the King's prerogative, without consulting with his Majesty first, and informing his princely judgment, was a thing preposterous; for that they ought first to have made that appear to his Majesty, and so to have given him assurance thereof upon consultation with him.

And for the main matter, that it should be against the law and against their oath, his Majesty said he had said enough before; unto which the Lord Chief Justice in effect had made no answer, but only insisted upon the former opinion; and therefore the King required the Lord Chancellor to deliver his opinion upon that point, Whether the stay that had been required by his Majesty were contrary to law, or against the Judges' oath.

The Lord Chancellor stood up and moved his Majesty, that because this question had relation to matter of law his Majesty would be informed by his learned counsel first, and they first to deliver their opinions; which his Majesty commanded them to do.

Thereupon his Majesty's Attorney-general gave his opinion, that the putting off of the day in manner as was required by his Majesty (to his understanding) was without all scruple no delay of justice, nor danger of the Judges' oath; insisting upon some of the reasons which his Majesty had formerly opened, and adding that the letter he had written in his Majesty's name was no imperious letter; as to say that his Majesty for certain causes, or for causes known to himself, would have them put off the day: but plainly and fairly expressed the causes unto them; for that the King conceived upon my Lord of Winchester's report that the case concerned him; and that his Majesty would willingly have spoken with them before, but by reason of his important business could not; and therefore required a stay till they might conveniently speak with him, which they knew could not be long. And in the conclusion of his speech wished the Judges seriously to consider with themselves, whether they were not in greater danger of breach of their oath by their proceeding than they could have been by their stay; for that it is part of their oath to counsel his Majesty when they are called; and if they will proceed first in a business whereupon they are called to counsel, and will counsel him when the matter is past, it is more than a simple refusal to give him counsel; and so concluded his speech; and the rest of the learned counsel consented to his opinion.

Whereupon the Lord Chief Justice of the King's Bench, answering nothing to the matter, took exceptions that the King's counsel learned should plead or dispute with the Judges; for he said they were to plead before the Judges, and not to dispute with them. Whereunto the King's Attorney replied, that he found that exception strange; for that the King's learned counsel were by oath and office (and much more where they had the King's express commandment) without fear of any man's face to proceed or declare against any the greatest peer or subject of the kingdom; and not only any subject in particular, but any body of subjects or persons, were they Judges, or were they an upper or a lower house of Parliament, in case that they exceed the limits of their authority, or take anything from his Majesty's royal power or prerogative; And so concluded, that this challenge, and that in his Majesty's presence, was a wrong to their places, for which he and his fellows did appeal to his Majesty for reparation. And thereupon his Majesty did affirm, that it was their duty so to do, and that he would maintain them therein, and took occasion afterward again to speak of it; for when the Lord Chief Justice said he would not dispute with his Majesty, the King replied, That the Judges would not dispute with him, nor his learned counsel might not dispute with them; so whether they did well or ill it must not be disputed.

After this the Lord Chancellor delivered his opinion clearly and plainly, that the stay that had been by his Majesty required was not against law, or any breach of a Judge's oath, and required that the oath itself might be read out of the statute; which was done by the King's Solicitor, and all the words thereof weighed and considered.

Thereupon his Majesty and the Lords thought good to ask the Judges severally their opinion; the question being put in this manner: Whether, if at any time, in a case depending before the Judges, which his Majesty conceived to concern him either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the meantime, they ought not to stay accordingly? They all (the Lord Chief Justice only except) yielded that they would, and acknowledged it to be their duty so to do; only the Lord Chief Justice of the King's Bench said for answer, that when that case should be, he would do that should be fit for a Judge to do. And the Lord

Chief Justice of the Common Pleas (who had assented with the rest) added that he would ever trust the justness of his Majesty's commandment.

After this was put to a point, his Majesty thought fit, in respect of the further day of argument, appointed the Saturday following, for the Commendams, to know from his Judges what he might expect from them concerning the same. Whereupon the Lord of Canterbury breaking the case into some questions, his Majesty did require his Judges to deal plainly with him, whether they meant in their argument to touch the general power of granting Commendams, yea or no. Whereupon all his said Judges did promise and assure his Majesty, that in the argument of the said case of Commendams, they would speak nothing which should weaken or draw into doubt his Majesty's prerogative for the granting of them; but intended particularly to insist upon the point of the *lapse* and other individual points of this case, which they conceive to be of a form differing from all other Commendams which have been practised.

The Judges also went further, and did promise his Majesty, that they would not only abstain from speaking anything to weaken his Majesty's prerogative of Commendams, but would directly and in plain terms affirm the same, and correct the erroneous and bold speeches which had been used at the bar in derogation thereof.

Also all the Judges did in general acknowledge and profess with great forwardness, that it was their duty, if any counsellor at the bar presumed at any time to call in question his Majesty's high prerogatives and regalities, that they ought to reprehend them and silence them; and all promised so to do hereafter.

Lastly, the two Judges which were then next to argue, Mr. Justice Doddridge and Mr. Justice Winch, opened themselves unto his Majesty thus far; that they would insist chiefly upon the *lapse*, and some points of incertainty, repugnancy, and absurdity, being peculiar to this Commendam; and that they would shew their dislike of that which had been said at the bar for the weakening of the general power; and Mr. Justice Doddridge said that he would conclude for the King, that the church was void and in his Majesty's gift; he also said that the King might give a Commendam to a Bishop either before or after consecration, and that he might give it him during his life, or for a certain number of years.

The Judges having thus far submitted and declared themselves, his Majesty admonished them to keep the bounds and limits of their several courts, and not to suffer his prerogative to be wounded by rash and unadvised pleading before them, or by new inventions of law; for as he well knew that the true and ancient common law is the most favourable for kings of any law in the world; so he advised them to apply themselves to the study and practice of that ancient and best law, and not to extend the power of any of their courts beyond their due limits; following the precedent of the best ancient Judges in the times of best government; and then they might assure themselves that he, for his part, in the protection of them and expediting of justice, would walk in the steps of the ancient and best kings: and thereupon gave them leave to proceed in their argument.

When the Judges were removed, his Majesty, that had forborne to ask the votes and opinions of his Council before the Judges, because he would not prejudicate the freedom of the Judges' opinions, concerning the point, Whether the stay of proceedings that had been by his Majesty required could by any construction be thought to be within the compass of the Judges' oath which they had heard read unto them, did then put the question to his Council; who all with one consent did give opinion, that it was far from any colour or shadow of such interpretation, and that it was against common sense to think the contrary, especially since there is no mention made in their oath of the delay of justice, but only that they shall not deny justice, nor be moved by any of the King's letters to do anything contrary to law or justice.

G. Cant. Tho. Ellesmere, Canc. T. Suffolk. E. Worcester. Lenox. Nottingham. Pembroke. W. Knollys. John Digby. Ralph Winwood. Tho. Lake. Fulke Greville. Jul. Cæsar. Fra. Bacon.

I have never been able to sympathize with the rest of Posterity either in its admiration of Coke's behaviour on this occasion, or in its reprobation of that of the other Judges. Coke's famous reply has the advantage of being short, magniloquent, and intelligible without any context; and therefore convenient for quotation; and being quoted without reference to the actual context, it sounds just as well

as magnanimous. But let any one look at it as it stands in the narrative; let him consider the question to which it pretends to be an answer; and he will see that it is in fact a mere refusal to answer,—and that upon no reasonable ground. The question asked had nothing to do with the state of any particular case, but related to a general rule of proceeding applicable to all cases alike. In *any* case, when the Judges were officially informed that the rights of the Crown were interested in it and that the King desired to speak with them, was it or was it not their duty to stay proceedings till they had heard what he had to say? The question was asked then because it was important to know beforehand how they meant to act in such cases thereafter. If Coke thought it was not his duty, he ought to have answered no. If upon better consideration he thought it was, he should have answered yes, and promised to act accordingly. But upon what pretence could he postpone his answer till "the case should be"? He was not asked to give an opinion beforehand upon the merits of any case, nor could a direct answer to the question put imply by possibility any such opinion. The whole of the case concerning which his opinion was asked was already before him. He had already, in the very letter which was under consideration, given an opinion upon it. Whether that opinion was right or wrong, and whether he meant to act upon it another time, was the present question. What withheld him from answering?

I can hardly think that any one who has taken the trouble to read that letter will find any difficulty in believing that he felt he had been in the wrong. The extent of the royal prerogative was a question of law, determinable by statutes and precedents. The course taken on this occasion by the Judges under his influence was one of those encroachments upon the prerogative by which it has been gradually limited and reduced within narrower bounds. The change might promise to be beneficial: but it was a change. As the law then stood, the precedents were against them, and therefore they were in the wrong. Eleven of them (who had probably formed no opinion of their own upon the question, but merely followed his), now saw that they had been in the wrong, and very properly submitted. Coke also felt that he had been wrong, but not being able to bring himself to own it,—a thing which he never found easy,—he took refuge in that magniloquent evasion: the whole proceeding from first to last being very characteristic of him, and in my opinion not at all sublime.

The question, however, was not the less practically settled: the King succeeded in holding his consultation, and the cause was allowed to proceed on the day appointed.

The *Præmunire*, it will be seen, was not touched upon on this occasion. Only two days before, the Archbishop of Canterbury with some other of the Council had been directed to inquire into the history of that proceeding and ascertain who were the authors of it,[1] —for the rumour was that it had been invented and advised by Coke himself,—and the further dealing with the question waited for their report.

4.

A case occurred at this time which shows that Bacon, though he never advised the reopening of the Church controversies which had been settled in the Hampton Court conference, continued to be as much as ever in favour of the healing policy which he had then so earnestly advocated. Dr. Burgess was a famous preacher, who having fallen under ecclesiastical censure—for what particular nonconformity we are not told—and been forbidden to preach, had betaken himself to the practice of medicine. While attending Lucy, Countess of Bedford, the Queen's great favourite and companion, in a serious illness, he had taken the opportunity to minister to her mind; and that with so good effect, that when she reappeared in Court after her recovery she wore her own face,—which, they say, made her look "somewhat strange." Mayerne, the Court physician, was so struck with his skill as a soul-curer,—what he thought of him as a body-curer tradition does not say,—that, thinking to do him a good turn, he "commended him to the King" for his performance, forgetting that the spiritual influence of a Puritan who had been for some offence against orthodoxy forbidden to preach was the last thing the King wanted to hear of, and that the sick-room might be as dangerous as the pulpit. It was an unlucky commendation. The King "was so moved" (says Chamberlain) "that he should dogmatize (as he called it) in his Court, that he commanded the Archbishop to look to it; who, sending for him, used him somewhat roughly, and enjoined him not to practice within ten miles of London."[2] Upon this it seems that he removed to Isleworth. But Lady Bedford did not lose her interest in him, and he had other friends in influential positions. Among the rest, Lady Winwood, wife of Sir Ralph who was presently to be Secretary of State, was a devoted disciple; so much so that six months later we find them taking a house in that part of the country at an extravagant rent,—being willing to "give the more for Dr. Burgess's neighbourhood."[3] In course of time his many friends and admirers seem to have suc-

[1] Camden. 3 Jan., 1616.
[2] Chamberlain to Carleton. 1 Aug. 1613.
[3] Id. 3 March, 1613-4.

ceeded in inducing him to give way upon some of the points on which he had hitherto been unconformable, so far as to admit of his being licensed to preach again, and Bacon now wished Villiers to use his influence with the King in his behalf,—a sufficient proof that his policy with Puritanism was still a policy of conciliation.

Of this letter we have two copies, one preserved among Bacon's own papers at Lambeth, and dated the 12th of June, the other printed by Robert Stephens from the original, which I have not seen, and dated the 13th. The Lambeth copy being all fairly written in Bacon's own hand, and having been folded and directed, was no doubt intended to go. But, wishing to make some additions or alterations in it, he withheld it and substituted the other. As it is a short letter, I give both versions entire.

A LETTER TO SIR GEORGE VILLIERS, FOR THE RESTORING OF DR. BURGESS TO PREACH. 12 JUN. 1616.[1]

Sir,

I do think you may do yourself honour, and (that which is more) do a good work, if you will assist and perfect a motion begun (and that upon a good ground both of submission and conformity) for the restoring of Doctor Burgess to preach. And I wish likewise that if Gray's-Inn should think good (after he is free from the state) to choose him for their preacher, his Majesty should not be against it: for certainly we shall watch him well if he should fly forth; so as he cannot be placed in a more safe auditory. This may seem a trifle; but I do assure you I do scarce know a particular wherein you may open more honest mouths to speak honour of you than this. And I do extremely desire that there may be a full cry from all sorts of people, specially the best, to speak and to trumpet out your commendation. I pray take it to heart, and do somewhat in it. I rest,

Your devoted and bounden servant,

FR. BACON.

12th of June 1616.

TO SIR GEORGE VILLIERS.[2]

Sir,

There is a particular wherein I think you may do yourself honour, which as I am informed hath been laboured by my Lady

[1] Gibson Papers, vol. viii. f. 35. All in Bacon's own hand: folded, sealed, and directed, but apparently not sent.

[2] Stephens's first collection, p. 167. From the original.

of Bedford and put in good way by the Bishop of Bath and Wells,[1] concerning the restoring to preach of a famous preacher, one Doctor Burgess; who though he hath been silenced a great time, yet he hath now made such a submission touching his conformity, as giveth satisfaction. It is much desired also by Gray's-Inn (if he shall be free from the State) to choose him for their preacher: and certainly it is safer to place him there than in another auditory, because he will be well watched, if he should any ways fly forth in his sermons beyond duty. This may seem a trifle; but I do assure you, in opening this man's mouth to preach, you shall open very many mouths to speak honour of you; and I confess I would have a full cry of puritans, of papists, of all the world to speak well of you; and besides I am persuaded (which is above all earthly glory) you shall do God good service in it. I pray deal with his Majesty in it. I rest

Your devoted and bounden servant,

Fr. Bacon.

June 13, 1616.

What was the immediate effect of Bacon's motion, we are not informed. But I find that in December 1616 Dr. Burgess was allowed to preach again;[2] and in the following July we hear of him delivering a sermon at Paul's Cross.[3] But I believe he never became preacher of Gray's Inn.

5.

Bacon's next employment,—though merely ministerial, and such as no other Attorney-General would have been held morally accountable for,—has been regarded in him as a serious betrayal of justice. It was the drawing of a pardon for the Countess of Somerset. This was of course an office which he could not have declined if he was to hold his place, for it was one of the regular duties of it. But I have no reason to think that it was unwelcome to him. What were his personal feelings with regard to sanguinary punishments, we have indeed no means of knowing. His official duty had never required him to take part in them. In the prosecution of unconfessing offenders to conviction and sentence, he was active and firm: so much was required for the vindication of the law. In what cases and how far the sentence should be carried into effect, was another question, and one upon which he was never called upon either to decide or advise.

[1] Dr. James Montague: concerning whom see Vol. IV. p. 40, note.
[2] Carew Letters. [3] Chamberlain to Carleton, 5 July 1617.

In this case however it seems to me most probable that he acquiesced without remonstrance, outward or inward, in the known determination of the King to use in Lady Somerset's favour the prerogative which by law undoubtedly belonged to him. The right could not be disputed. Nor can it be truly said that justice was materially compromised by the exercise of it in this instance. It is true that the Countess, having been the prime mover in the matter, may seem to have been of all the party least entitled to mercy; and if justice required that the measure of punishment should always be in proportion to the moral culpability, it would not be easy to justify a distinction in her favour. Between the suborner and the suborned, indeed,—between the person who procures a murder under the passion of hate or fear, and the person who undertakes and executes it in cold blood for hire,—a question might be fairly raised which is morally the more culpable. But it is not a question which we need settle. The true principle of judicial punishment is not moral retribution, but self-defence: its proper and only legitimate object is to deter people from committing acts injurious to society. And if in the proceedings against the murderers of Overbury the object was to make it notorious that murder could not be committed with impunity by high or low, it cannot be denied that the lesson was effectually taught. The severity which was needed to enforce it fell heaviest upon those who came first; who happened to be the meaner instruments in whom a sufficiently striking example could not be made by any punishment short of death on the gallows; and the long interval which passed before the case against the greater persons could be ready for adjudication, together with the immense difference in their condition of life, made some alteration in the question. Ignominy, and the utter ruin of so splendid a fortune,—sudden precipitation from such a height to such a depth,—was itself an example sufficient to warn and deter: and it is quite conceivable that the public execution of a young and beautiful woman might have interfered with the effect of it, by turning indignation into pity. I have heard it said by a wise man who had had much experience of the working of penal enactments, that he had no faith in the efficacy of punishments "except where they express and exasperate the general indignation of society against the delinquents." We have it upon Camden's authority that when the Countess received her sentence the general feeling among the bystanders was pity; and I do not find any evidence that the pardon was at the time unpopular. Posterity simplifies these problems by forgetting half the conditions; but even Posterity would perhaps have taken her part if the King had been relentless.

To Sir George Villiers.[1]

Sir,

I send you inclosed a warrant for my La. of Somerset's pardon, reformed in that main and material point of inserting a clause (that she was not a principal, but an accessary before the fact, by the instigation of base persons). Her friends think long to have it dispatched, which I marvel not at, for that in matter of life moments are numbered.

I do more and more take contentment in his Majesty's choice of Sir Oliver St. Johns, for his deputy of Ireland, finding upon divers conferences with him his great sufficiency; and I hope the good intelligence which he purposeth to hold with me by advertisements from time to time shall work a good effect for his Majesty's service.

I am wonderful desirous to see that kingdom flourish, because it is the proper work and glory of his Majesty and his times. And his Majesty may be pleased to call to mind, that a good while since, when the great rent and divisions were in the Parliament of Ireland, I was no unfortunate remembrancer to his Majesty's princely wisdom in that business. God ever keep you and prosper you.

Your true and most devoted and bounden servant,

Fr. Bacon.

1 July, 1616.

The warrant was accompanied with the following letter to the King, which I suppose was appended to it; and which I take from the copy in the 'State Trials,' not having met with it elsewhere.

May it please your excellent Majesty,[2]

This Bill containeth your Majesty's gracious pardon unto the Lady Frances late Countess of Somerset, for being accessary before the fact, of the death and impoisonment of Sir T. Overbury.

It hath inserted, as motives to your Majesty's mercy, four respects: that is to say, The respect of her father, friends, and family. Her voluntary confession both when she was prisoner and at the Bar. The promise made publicly by the Lord High Steward, and the Peers, to intercede for your Majesty's mercy.

[1] Fortescue Papers. Original: own hand.
[2] From the 'State Trials,' p. 1007.

And that the crime was not of a principal, but of an accessary before the fact, by the instigation of base persons.

The like pardon formerly passed your Majesty's signature, and is now amended by your Majesty's special direction from your royal mouth, in two points: The one is, That imprisonment in the Tower or other confining at your Majesty's pleasure is not pardoned. The other, that the solemn promise made at her arraignment by the Lord High Steward and the Peers to intercede to your Majesty for your mercy, is inserted. FRANCIS BACON.

6.

After the "great rent and divisions in the Parliament of Ireland," concerning which see Vol. IV. p. 382, there had succeeded a very quiet time; so quiet that History has forgotten most of the particulars. When they met again on the 11th of October 1614, the Speaker took the chair without opposition, inquiry into the disputed elections was not insisted on, the Government measures were readily passed, and the only thing which portended disagreement was a list of grievances, including one petition at least which the Government was not prepared to concede,—a petition that the recusant lawyers might again be permitted to practise. Nor was even this presented in a shape which threatened immediate embarrassment; for the concession of it was not made a condition of proceeding with business; and when they met again, after a few months' prorogation had given them full time to consider and agree upon their course, they made no difficulty in passing a Subsidy Bill. We hear of no quarrel between the Houses and the Deputy. Several bills had been passed, and some others were desired; and to give time for a reference of these to the English Council, the session was prorogued to the 24th of October 1615. So far therefore, the great experiment of introducing parliamentary government into Ireland seemed to be proceeding very happily. What followed is hard to understand. On the 22nd of August, orders were given for the dissolution, as soon as it met, of the Parliment which had been so conformable; and on the 20th of November, Sir Arthur Chichester, who had used his authority so judiciously and successfully, was required to hand it over to the Chancellor and Sir John Denham.[1]

From the tenor of the following letters, I incline to suspect that the cause of this was a difference of opinion between the Deputy and the Irish Council concerning the treatment of Recusants. It is

[1] Gardiner, vol. ii. p. 323.

evident from them that since Chichester's recall, the two Lords Justices who were left in authority pending the appointment of his successor had been pursuing or consenting in a policy towards recusant magistrates in towns, which Bacon thought dangerous, and which Chichester was not at all likely to have approved. It is probable enough that his own policy had met with insuperable obstructions at the Council-board, and that the differences had grown too great to allow of their working together any longer.

Bacon's views on this matter were such as might have been anticipated from his former advices. He looked forward with confidence to the time when Protestantism would overgrow Popery in Ireland by a natural process of development; but until that time came he was against all attempts to eradicate or banish it by authority. And I think, if he had had the experience of the next two centuries to correct his judgment by, and had known how little way Protestantism was to make during those two centuries with the mass of the Irish people, he would have been content to let Popery flourish unmolested, as in a soil of which it was the natural growth.

To Sir George Villiers.[1]

Sir,

I think I cannot do better service towards the good estate of the kingdom of Ireland than to procure the King to be well served in the eminent places of Law and Justice; I shall therefore name unto you for the Attorney's place there, or for the Solicitor's place, if the now Solicitor shall go up, a gentleman of mine own breeding and framing, Mr. Edward Wrytington, of Gray's-Inn; he is born to eight hundred pound a year; he is the eldest son of a most severe justicer amongst the recusants of Lancashire, and a man most able for law and speech, and by me trained in the King's causes. My Lord Deputy by my description is much in love with the man. I hear my Lord of Canterbury, and Sir Thomas Laque, should name one Sir John Bear, and some other mean men. This man I commend upon my credit for the good of his Majesty's service. God ever preserve and prosper you. I rest

Your most devoted
and most bounden servant,
Fr. Bacon.

2 of July, 1616.

[1] Fortescue papers. Original: own hand.

To Sir George Villiers.[1]

Sir,

Because I am uncertain whether his Majesty will put to a point some resolutions touching Ireland, now at Windsor; I thought it my duty to attend his Majesty by my letter, (and thereby to supply my absence,) for the renewing of some former commissions for Ireland, and the framing of a new commission for the Wards and the Alienations, which appertain properly to me as his Majesty's Attorney, and have been accordingly referred by my Lords. I will undertake that they are prepared with a greater care, and better application to his Majesty's service in that kingdom, than heretofore they have been; and therefore of that I say no more.[2] And for the instructions of the new Deputy, they have been set down by the two Secretaries, and read to the board; and being things of an ordinary nature, I do not see but they may pass.

But there have been three propositions and counsels which have been stirred, which seem to me of very great importance; wherein I think myself bound to deliver to his Majesty my advice and opinion, if they should now come in question.

The first is, touching the Recusant Magistrates of the towns of Ireland, and the communalties themselves, their electors, what shall be done. Which consultation ariseth from the late advertisements of the two Lords Justices upon the instance of the two towns of Limerick and Kilkenny; in which advertisement they represent the danger only, without giving any light for the remedy, rather warily for themselves, than agreeably to their duties and place.

In this point, I humbly pray his Majesty to remember, that the refusal is not of the Oath of Allegiance (which is not enacted in Ireland), but of the Oath of Supremacy, which cutteth deeper[3] into matter of conscience. Also, that his Majesty will, out of the depth of his excellent wisdom and providence, think, and as it were calculate with himself, whether time will make more for the cause of religion in Ireland, and be still more and more propitious; or whether deferring remedies will not make

[1] Stephen's first collection, p. 169. Second collection, p. 5. From the original.

[2] The effect was (as we shall see in a future letter, 27 July, 1618) an increase of the year's profit from 200*l.* to 4000*l.*

[3] *Deep*: R.

the case more difficult. For if time give his Majesty the advantage, what needeth precipitation to extreme remedies? But if time will make the case more desperate, then his Majesty cannot begin too soon. Now in my opinion, time will open and facilitate things for reformation of religion there, and not shut up or block[1] the same. For, first, the plantations going on, and being principally of Protestants, cannot but mate the other party in time; Also his Majesty's care in placing good Bishops and divines; in amplifying the College there; and in looking to the education of Wards and the like; as they are the most natural means, so are they like to be the most effectual and happy, for the weeding out of popery, without using the temporal sword; So as, I think, I may truly conclude, that the ripeness of time is not yet come.

Therefore my advice in all humbleness is, that this hazardous course of proceeding, to tender the Oath to the Magistrates of towns, proceed not, but die by degrees. And yet, to preserve the authority and reputation of the former Council, I would have somewhat done; which is, that there be a proceeding to seizure of Liberties; but not by any act of power, but by *Quo warranto*, or *Scire facias*; which is a legal course; and will be the work of three or four terms; by which time the matter will somewhat cool.

But I would not (in no case[2]) that the proceeding should be with both the towns[3] which stand now in contempt, but with one of them only; choosing that which shall be thought most fit. For if his Majesty proceed with both, then all the towns that are in the like case will think it a common cause; and that it is but their case to-day, and their own to-morrow. But if his Majesty proceed but with one, the apprehension and terror will not be so strong; for they will think it may be their case as well to be spared as prosecuted; and this is the best advice that I can give to his Majesty in this strait; and of this opinion seemed my Lord Chancellor to be.

The second proposition is this: It may be his Majesty will be moved to reduce the number of his Council of Ireland, which is now almost fifty, to twenty, or the like number; in respect the greatness of the number doth both embase the authority of the Council, and divulge the business. Nevertheless, I do hold this

[1] *Lock out*: R. [2] *Any*: R. [3] *Both towns*: R.

proposition to be rather specious and solemn, than needful at this time; for certainly it will fill the state full of discontentment; which in a growing and unsettled estate oüght not to be.

This I could wish; that his Majesty would appoint a select number of councillors there, which might deal in the improvement of his revenue (being a thing not fit to pass through too many hands), and that the said selected number should have days of sitting by themselves; at which the rest of the Council should not be present; which being once settled, then other principal business of state may be handled at those sittings; and so the rest begin to be disused, and yet retain their countenance, without murmur or disgrace.

The third proposition, as it is wound up[1], seemeth to be pretty, if it can keep promise; for it is this, That a means may be found to reinforce his Majesty's army there by five hundred or a thousand men; and that without any penny increase of charge. And the means should be, that there should be a commandment of a local removing, and transferring some companies from one province to another; whereupon it is supposed, that many that are planted in house and lands, will rather leese their entertainment than remove; and thereby new men may have their pay, and yet the old be mingled in the country for the strength thereof.

In this proposition two things may be feared; the one, discontent of those that shall be put off; the other, that the companies shall be stuffed with *Tyrones*, instead of *Veterani*. I wish therefore that this proposition be well debated ere it be admitted. Thus having performed that which duty binds me to, I commend you to God's best preservation.

Your most devoted and bounden servant,

FR. BACON.

Gorhambury, July 5, 1616.

7.

The report of the Archbishop and other councillors who had been appointed to inquire into the history of the indictments preferred against the Chancery in the King's Bench, does not appear to have been preserved. Either it failed to bring the authorship home to Coke, or it was reserved for the private account which had to be

[1] *Moved*: R.

settled with him, and not allowed to mix itself with the question of state, which was to be dealt with upon its own merits.

To set that question at rest, and at the same time to remove some popular misapprehensions as to his own views and policy, the King went in person to the Star Chamber on the last meeting before the summer circuits, and made a public declaration concerning the several obligations of himself, his Judges, and his subjects in general: —a declaration with which everybody who wishes to form a judgment of his actions ought to make himself acquainted; for it exhibits his own idea, whether right or wrong, of the duty which belonged to his place.

This step was taken by Bacon's advice,[1] and I fancy that I see traces here and there in the King's speech of the memorial by which the advice was probably accompanied; but if there ever was such a thing, it has not survived; and though the King was quick in taking suggestions from other minds, he assimilated them as quickly, and so converted them into his own that any attempt to separate the elements would be hopeless.

He had come, he said, to renew the oath which he took at his coronation; when he swore to do justice,—that is, to give every man his own; and to maintain the law,—namely "the common law of the land, according to which the King governs, and by which the people are governed." He had hitherto, "as far as human frailty might permit him or his knowledge inform him," kept that oath; and it was still his intention to maintain all the points of it; "especially in laws, and of laws especially the common law" . . . "and as to maintain it, so to purge it, for else it cannot be maintained; and especially to purge it of two corruptions, Incertainty and Novelty." To remove uncertainties inherent in the law, the remedy must be by Parliament with the advice of the Judges; to prevent the introduction of novelties by the Judges themselves, they were to remember that they were not makers of law, but only interpreters; that their "interpretations must always be subject to common sense and reason;" and that their opinions should be given, not singly, but upon conference and with deliberation.

This brings him to the questions then in dispute; and as it is important to understand his position as he understood it himself, I will give that part of the declaration without abridgment.

[1] "Amongst the counsels which (since the time I had the honour to be first of your learned and after of your privy council) I have given your M. . . . I do take comfort in none more than that I was the first that advised you to come in person into the Star-chamber." See an undated letter to the K. (probably written 1 Jan., 1619–20), vol. vi. p. 249 of the ten volume edition of Bacon's works.

"Now having spoken of your office in general, I am next to come to the limits wherein you are to bound yourselves, which likewise are three. First, encroach not upon the Prerogative of the Crown: If there fall out a question that concerns my Prerogative or mystery of state, deal not with it till you consult with the King or his Council or both: for they are transcendent matters, and must not be sliberely carried with overrash wilfulness; for so you may wound the King through the sides of a private person: And this I commend unto your special care, as some of you of late have done very well, to blunt the sharp edge and vain popular humour of some lawyers at the Bar, that think they are not eloquent and bold-spirited enough, except they meddle with the King's prerogative: But do not you suffer this; for certainly if this liberty be suffered, the King's Prerogative, the Crown, and I, shall be as much wounded by their pleading, as if you resolved what they disputed. That which concerns the mystery of the King's power is not lawful to be disputed: for that is to wade into the weakness of Princes, and to take away the mystical reverence that belongs unto them that sit in the Throne of God.

"Secondly, that you keep yourselves within your own benches, not to invade other jurisdictions, which is unfit and an unlawful thing. In this I must enlarge myself.

"Besides the Courts of Common Law there is the Court of Requests, the Admiralty Court, the Court of the President and Council of Wales, the President and Council of the North, High Commission Courts, every Bishop in his own Court. These Courts ought to keep their own limits and bounds of their commission and instructions, according to the ancient precedents: And like as I declare that my pleasure is that every of these shall keep their own limits and bounds, so the Courts of Common Law are not to encroach upon them, no more than it is my pleasure that they should encroach upon the Common Law. And this is a thing regal and proper to a King, to keep every Court within his own bounds.

"In Westminster Hall there are four Courts; two that handle causes civil, which are the Common Pleas and the Exchequer: two that determine causes criminal, which are the King's Bench and the Starchamber where now I sit. . . .

"Keep you therefore all in your own bounds, and for my part, I desire you to give me no more right in my private prerogative than you give to any subject; and therein I will be acquiescent.

"As for the absolute Prerogative of the Crown, that is no subject for the tongue of a lawyer, nor is lawful to be disputed. It is atheism and blasphemy to dispute what God can do: good Christians content themselves with his will revealed in his word: So it is presumption and high contempt in a subject to dispute what a King can do, or say that a King cannot do this or that; but rest in that which is the King's will revealed in his law.

"The King's Bench is the principal Court for criminal causes, and in some respects it deals with civil causes.

"Then there is a Chancery Court: this is a Court of Equity, and hath

power to deal likewise in civil causes. It is called the dispenser of the King's conscience, following always the intention of law and justice; not altering the law, not making that black which other Courts made white, nor *e converso*: But in this it exceeds the other Courts, mixing mercy with justice, where other Courts proceed only according to the strict rules of law: and where the rigour of the law in many cases will undo a subject, there the Chancery tempers the law with equity, and so mixeth mercy with justice as it preserves men from destruction.

"And thus (as before I told you) is the King's throne established by mercy and justice.

"The Chancery is undependent of any other Court, and is only under the King: There it is written *Teste meipso*: from that Court there is no appeal. And as I am bound in my conscience to maintain every Court's jurisdiction, so especially this, and not suffer it to sustain wrong; yet so to maintain it as to keep it within the own limits, and free from corruption. My Chancellor that now is, I found him Keeper of the Seal, the same place in substance, although I gave him the style of Chancellor, and God hath kept him in it till now: and I pray God he may hold it long, and so I hope he will. He will bear me witness I never gave him other warrant than to go on in his Court according to precedents warranted by law in the time of the best governing Kings, and most learned Chancellors. These were the limits I gave unto him. Beyond the same limits he hath promised me he will never go.

"And as he hath promised me to take no other jurisdiction to himself, so is it my promise ever to maintain this jurisdiction in that Court. Therefore I speak this to vindicate that Court from misconceipt and contempt.

"It is the duty of Judges to punish those that seek to deprave the proceedings of any the King's Courts, and not to encourage them anyway: And I must confess I thought it an odious and inept speech, and it grieved me very much, that it should be said in Westminster Hall that a *Præmunire* lay against the Court of the Chancery and officers there: How can the King grant a *Præmunire* against himself?

"It was a foolish, inept, and presumptuous attempt, and fitter for the time of some unworthy King. Understand me aright: I mean not the Chancery should exceed his limit; but on the other part the King only is to correct it, and none else: And therefore I was greatly abused in that attempt. For if any was wronged there, the complaint should have come to me. None of you but will confess you have a King of reasonable understanding and willing to reform; why then should you spare to complain to me, that being the highway, and not go the other way, and backway, in contempt of our authority?

"And therefore sitting here in a seat of judgment, I declare and command that no man hereafter presume to sue a *Præmunire* against the Chancery, which I may the more easily do, because no *Præmunire* can be sued but at my suit: and I may justly bar myself at mine own pleasure."

. . . . . .

"What greater misery can there be to the law than contempt of the law? and what readier way to contempt than when questions come, what shall be determined in this Court and what in that? Whereupon two evils do arise. The one, that men come not now to Courts of Justice to hear matters of right pleaded, and decrees given accordingly, but only out of a curiosity to hear questions of the jurisdiction of Courts disputed, and to see the event, what Court is likely to prevail above the other. And the other is that the pleas are turned from Court to Court in an endless circular motion, as upon Ixion's wheel: And this was the reason why I found just fault with that multitude of Prohibitions: For when a poor minister had with long labour and great expense of charge and time gotten a sentence for his tithes, then comes a Prohibition and turns him round from Court to Court, ... and this makes the fruit of suits like Tantalus' fruit, still near the suitor's lips, but can never come to taste it. And this indeed is a great delay of justice and makes causes endless. Therefore the only way to avoid this, is for you to keep your own bounds, and nourish not the people in contempt of other Courts, but teach them reverence to Courts in your public speeches, both in your benches and in your circuits; so shall you bring them to a reverence both of God and the King."[1]

The justice of these practical injunctions—and there are many more equally good, though not bearing so directly upon the present question—will hardly be disputed. If they are less wanted now than they were then, it is only because they are now more generally understood and accepted. And though the doctrine which makes the King answerable to God alone, and the Judges to the King—

He to God only, they to God and him—

must now be condemned as heretical, it is only fair to remember that this was not because the doctrine was unconstitutional then, but because the constitution has been changed since. James did but hold as a living fact with all its logical consequences what the law still maintains as a fiction—that the King can do no wrong: a maxim which has its roots so deep in the constitution, that to this day we have not been able to get rid of it in theory, though by contriving that the King shall not be able to do anything without the concurrence of somebody who *can* do wrong, we have found a way to escape from its practical consequences. But that solution of the difficulty was not possible for the father of Charles I.; and if in the year 1616 Coke had been asked by whom and by what legal process the King could be called to account for his actions, he would not have been able to answer.[2]

The point, however, was not material on this occasion. Though

[1] Works of James I., p. 556–560.

[2] See 'Institutes,' part iv. chap. lxxiv., near the end.

James would have thought that he was betraying the post which he was divinely appointed to defend if he had admitted the royal prerogative to be a fit subject of dispute in Court, that was not the question at issue in either of the cases with which he was now dealing. To say that the King's prerogative could never be lawfully called in question was one thing: to say that questions in which the King's prerogative was concerned were not to be determined without hearing what the King had to say (and that was all he contended for in the Commendam case) was another. Nor was the right of the Chancery to give relief after judgment at common law (which was all that he maintained in the Præmunire case) dependent upon the doctrine that the Chancery was accountable to the King alone. If the right existed at all, it was still a right, whether the King were judge or the King's Bench.

Of these two questions, the first had been settled for the time by the late proceeding in Council, the decision of which was by the present declaration reinforced and proclaimed. But the second had still to be disposed of. The King's personal condemnation of the action as presumptuous, with a peremptory prohibition of its renewal, would not have been enough to satisfy the public that Coke had been at fault in law. It was necessary to put forth some formal manifesto with the reasons. Bacon, as we have seen, had proposed that this should be done by an act of Council, as in the Commendam case. But for some reason of which we are not informed—perhaps because in this case the *advice* of the Council was not wanted—it was decided to do it in the form of a decree. And on the 18th of July, 1616, the following decree, which is evidently the work of Bacon, was issued under the Privy Seal.

THE KING'S DECREE TOUCHING THE GRANTING OF PRÆMUNIRES AGAINST ANY FOR SUEING IN CHANCERY AFTER A JUDGMENT AT COMMON LAW.[1]

Anno 14 Jacobi Regis: sexta pars Patēn. numero 25.

JAMES by the grace of God, etc.

WHEREAS our right trusty and well-beloved Sir Francis Bacon, Knt., our Counsellor and Attorney-General, received a letter from our Chancellor of England, dated the 19th of March, Anno Domini 1615, written by our express commandment, directing and requiring him and the rest of our learned counsel to peruse

[1] Lansd. MSS. 174, f. 119. Copy in Chancery form, with corrections in some clerk's hand, showing that it has been examined. Docketed by Sir Julius Cæsar, "The King's decree touching the granting of Præmunires against any for sueing in Chancery after a judgment, at Common Law, and precedents to justify the proceedings of the Chancery, and that Præmunire lieth not in that Court: in an. 1615."

such precedents as should be produced unto them, of the time of K. Henry 7 and since, of complaints made in the Chancery, there to be relieved according to equity and conscience after judgments in the Courts of the Common Law, in cases where the Judges of the Common Law could not relieve them, and thereupon to certify us of the truth of that they should find and of their opinions concerning the same; which letter followeth in these words:—

Mr. Attorney. His M. being informed that there be many precedents in the Court of Chancery in the time of K. Henry 7 and continually since, that such as complained there to be relieved according to equity and conscience after judgments in the Courts of the Common Law, in cases where the Judges of the law could not relieve them (being bound by their oath to observe the strict rules of the law), is willing to understand whether there be such precedents as he is informed of; and therefore hath commanded me to let you know that his will and pleasure is that you call to assist you his Majesty's Serjeants and Solicitor, and to peruse such precedents of this kind as shall be produced unto you, and thereupon to certify his Majesty of the truth of that you shall find, and of your opinions concerning the same. And for your better direction therein I have sent you here-inclosed a note in writing delivered unto me, mentioning some such precedents in K. Henry 7 time and since; and I am told that there be the like in former times. His Majesty expecteth your proceeding in this with as much speed as conveniently you may, and so rest

Your assured friend,

T. ELLESMERE, Canc.

At York House
19 Martii, 1615.

AND WHEREAS our Attorney-General and the rest of our Learned Counsel did thereupon return unto us their certificate subscribed with all their hands according to our commandment and direction given them by the said letter, which certificate followeth in these words:—

According to your M. commandment we have advisedly con-

sidered of the note delivered unto us of precedents of complaining and proceeding in Chancery after judgments at Common Law, and have also seen and perused the originals out of which the same note was abstracted: upon all which we find and observe the points following:

1. We find that the same note is fully verified and maintained by the originals.

2. We find that there hath been a strong current of practice of proceeding in Chancery after judgment, and many times after execution, continued from the beginning of King Henry the seventh's reign unto the time of the Lord Chancellor that now is, both in the reigns *seriatim* of the several Kings, and in the times of the several Chancellors, whereof divers were great learned men in the law, it being in cases where there is no remedy for the subject by the strict course of the Common Law unto which the Judges are sworn.

3. We find that this proceeding in Chancery hath been after judgment in actions of several natures, as well real as personal.

4. We find it hath been after judgments in your Majesty's several courts,—the King's Bench, Common Pleas, Justices in Eyre, etc.

5. We find it hath been after judgments obtained upon verdict, demurrers, and where writs of error have been brought.

6. We find in many of the cases that the judgments are expressly mentioned in the Bills in the Chancery themselves to have been given and relief prayed thereupon, sometimes for stay of execution, sometimes after execution; of which kind we find a great number in K. Henry 7th's time.

7. We find the matters in equity laid in such Bills in most of the cases to have been matter precedent before the judgments, and not matter of agreement after.

8. We find in the said cases not only the Bill preferred, but motions, orders, injunctions, and decrees thereupon for discharging and releasing of the judgments, or avoiding the possession thereupon obtained, and sometimes for the mean profits and the release of the costs, etc.

9. We find in some of the cases that this very point (*that judgment hath been given*) hath been stood upon by the defendants and alleged by them by way of demurrer, and overruled.

10. We find that the Judges themselves in their own Courts

when there appeared to them matter of equity, because they by their oath and office could not stay the judgment, except it be for some small time, have directed the parties to seek relief in Chancery.

11. We find that this hath not only been done in the times of the several Chancellors, but by the Judges themselves (and that without difficulty) while they sat in Chancery in the vacancy or absence of the Chancellor.

12. We find the hands of sundry principal counsellors at law, whereof divers of them are now Judges and some of them in chief place, to bills of this kind.

13. Lastly there were offered to have been showed unto us many other precedents, whereof we heard some read; and found them to be of like nature with those contained in the note.

FR. BACON.
HEN. MONTAGU.
RAN. CREWE.
HEN. YELVERTON.

AND WHEREAS also our said Attorney received one other letter from our said Chancellor with a Case therein enclosed, written likewise by our express commandment, dated the 27th of March 1616, directing and requiring him and the rest of our Learned Counsel, together with the Attorney of our dear son the Prince, to confer together upon the said case, and to consider advisedly of all the parts thereof, and thereupon to peruse all the statutes of Præmunire or Provisors, and all other statutes as they should conceive to be necessary to be considered of, for resolving the question propounded in that case; and thereupon to report unto us their opinions in writing concerning the same; which letter and Case therein enclosed follows in these words:—

Mr. Attorney. His Majesty hath perused this case enclosed, and hath commanded me to send it unto you; and his will and pleasure is that you call unto you Mr. Serjeant Montague, Mr. Serjeant Crew, Mr. Solicitor, and Mr. Walter the Prince's Attorney, and that you confer together thereupon and consider advisedly and deliberately of all the parts thereof, and thereupon to peruse all the statutes of Præmunire or Provisors, and all other such statutes as you shall conceive to be necessary to be considered of, for

resolving the question propounded in this case. This his Majesty would have to be done with mature deliberation, and yet with as much speed as conveniently you can. And when you have sufficiently informed yourselves therein, then to report unto him your opinions in writing. And so I commit you to God, and rest

Your very assured loving friend

T. ELLESMERE, Canc.

At York House,
27 Martii 1616.

A. hath judgment and execution in the King's Bench or Common Place against B. in an action of debt of 1000*l.* and in an *ejectione firmæ* of the manor of D. B. complains in the Chancery to be relieved against these judgments according to conscience and equity, allowing the judgments to be lawful and good by the rigour and strict rules of the Common Law, and the matters in conscience and equity such as the Judges of the Common Law (being no Judges of Equity but bounden by their oaths to do the law) cannot give any remedy or relief for the same either by error or attaint or by any other means.

Quæstio.

Whether the Chancery may relieve B. in this and such like cases, or else leave him utterly remediless and undone; and if the Chancery be restrained herein by any Statute of Præmunire &c. then by what statute and by what words in any statute, is the Chancery so restrained and conscience and equity banished, excluded, and damned?

AND WHEREAS according to our said commandment our said Learned Counsel and the Attorney of our dear son the Prince returned unto us a certificate of their opinions upon the said Statutes under all their several hands concerning the same case; which certificate followeth in these words:—

According to your M. commandment we have deliberately advised of the Case sent unto us by the Lord Chancellor, and of the Statutes, as well those of Præmunire as others, as far as we take it may concern the case; and for our better information herein, we have thought fit to send for and peruse the original

records themselves remaining in the Tower of London of those Statutes, not only appearing upon the Roll of Parliament but also upon the original Roll of petitions in Parliament with the King's answers, which is the warrant to the Roll of Parliament.

We have also taken into consideration as well book-law as divers other acts of Parliament which may give light to the Statutes whereupon the question properly grows; together with such ancient records and precedents as we could find; as well those which maintain the authority of the Chancery, as those which seem to impeach the same.

And upon the whole matter we are all of one opinion that the Chancery may give relief in the case in question; and that no Statute of Præmunire &c. or other statute restraineth the same.

And because we know not what use your Majesty will be pleased to make of this our opinion, either for the time present or future, we are willing to give some reasons of the same; not thinking fit to trouble your Majesty with all those things whereupon we have grounded ourselves, but selecting out some principal things which moved us to be of this opinion, to the end the same may be a fuller object of your Majesty's princely judgment, whereunto we always submit ourselves.

And first of all we must lay for a sure foundation that which was contained in our former certificate, concerning the continual practice by the space now of six score years, in the times of King Henry the 7th, King Henry the 8th, King Edward the 6th, Queen Mary and Queen Elizabeth, of this authority; and that in those times when the same authority was managed not only by the Bishops, which might be thought less skilful or less affectionate towards the laws of the land, but also by divers great lawyers which could not but both know and honour the law as the means of their advancement; Sir Thomas Moore, the Lord Awdeley, the Lord Riche, Sir Nicholas Bacon, Sir Thomas Bromley, Sir John Puckering.

And further that most of the late Judges of the kingdom, either as Judges when they sate in Chancery by commission, or as counsellors at law when they set their hands to Bills, have by their judgment and counsel upheld the same authority. And therefore forasmuch as it is a true ground that *optimus legum interpres consuetudo*, especially when the practice or custom passeth not amongst vulgar persons but amongst the most high and most

scient magistrates of the kingdom; and when also the practising of the same should lie under so heavy a pain as the *Præmunire;* this is unto us a principal and implicit satisfaction that those statutes ought not to be construed to extend to this case. And this of itself (we know) is of far more force to move your Majesty than any opinion of ours; because Kings are fittest to inform Kings, and Chancellors to teach Chancellors, and Judges to teach Judges.

But further out of our own science and profession we have thought fit to add these further reasons and proofs, very briefly, because in case of so ancient a possession of jurisdiction we hold it not fit to amplify.

The statutes upon which this question grows are principally two; whereof one is a statute of Præmunire, the other is a statute of simple prohibition.

That of the Præmunire is the statute 27 Ed. 3. cap 1°. And the statute of the simple prohibition is the statute of 4 H. 4. cap. 23°.

There be divers other statutes of both kinds; but the question will rest principally upon these two, as we conceive it.

For the statute 27 Ed. 3 it cannot in our opinions extend unto the Chancery for these reasons:—

1. First out of the mischief which the Statute provides for and recites, viz: That such suits and pleas (against which the statute is provided) were in prejudice and disinherison of the King and his Crown, which cannot be applied to the Chancery: for the King cannot be disinherited of jurisdiction but either by the foreigner or by the subject, but never by his own Court.

2. Out of the remedy which the Statute appoints: viz: That the offenders shall be warned within two months to be before the King and his Council or in his Chancery, or before the Kings Justices of the one Bench or the other &c. By which words it is opposite in itself that the Chancery should give both the offence and the remedy.

3. Out of the penalty, which is not only severe but hostile; namely that the offenders shall be put out of the King's protection; which penalty altogether savours of adhering to foreign jurisdiction, and would never have been inflicted upon an excess only of jurisdiction in any of the King's Courts, as the Court of Chancery is.

4. Out of the statutes precedent and subsequent of 25° Ed. 3i, cap. 1°, and 16° R. 2 cap. 5°. which are of the same nature and cannot be applied but to foreign Courts: for the word *alibi* or elsewhere is never used but where Rome is named specially before.

5. The disjunctive in this statute (which only gives the colour) viz: that they which draw any out of the realm in plea whereof the cognizance pertaineth to the King's Court, (or) of things whereof judgments be given in the King's Court, or which do sue in any other Court to defeat or impeach the judgments given in the King's Court,—This last disjunctive (we say), which must go further than Courts out of the realm (which are fully provided for by the former branch), hath sufficient matter and effect to work upon in respect of such Courts which though they were locally within the realm, yet in jurisdiction were subordinate to the foreigner: such as were the Legate's Court, the Delegate's Court, and in general all the Ecclesiastical Courts within the realm (at that time), as it is expressly construed by the Judges 5° E. 4i. fol. 6°.

6. In this the sight of the record of the petition doth clear the doubt, where the subjects supplicate to the King to ordain remedy against those which pursue in other Courts than his own against judgments given in his Court, which explains the word (other) to be other than the King's Courts.

7. With this agreeth notably the Book of Entries, which translates the word 'in other Court,' not *in alia Curia,* but *in aliena Curia.*

8. This statute of 27 E. 3 being in corroboration of the Common Law (as itself recites), we do not find in the Register any precedent of the writs of (ad jura Regia)[1] which are framed upon these cases that were afterwards made penal by præmunire, but only against the Ecclesiastical Courts.

9. Lastly, we have not found any precedent at all of any conviction upon the statutes of Præmunire of this nature for suits in Chancery; but only two or three Bills of Indictment preferred. *Sed nihil inde venit* for ought appears to us.

For the Statute of Henry 4, that no doubt was made against proceedings within the realm and not against foreign, and there-

[1] The copy in the 'Collectanea Juridica' gives "the writ *ad cur. Regis.*"

fore hath no penalty annexed. Nevertheless we conceive that it extends not to the Chancery in the case delivered, for these reasons:

1. First. This Statute recites, where the parties are made to come upon grievous pain, sometimes before the King himself, sometimes before the King's Council, and sometimes in the Parliament, to answer thereof anew, &c. Where it appeareth that the Chancery is not named, which could not have been forgotten, but was left out upon great reason, because the Chancery is a Court of ordinary Justice for matter of Equity, and the statute meant only to restrain extraordinary commissions, and such like proceedings.

2. This appears fully by view and comparing of the two petitions which were made the same Parliament of 4 Hen. 4, placed immediately one before the other; the first which was rejected by the King, and the second whereupon the statute was made; whereof the first was to restrain three ordinary proceedings of justice; that is to say, in the Chancery by name, in the Exchequer, and before the King's Council by process of Privy Seal. Unto which the King makes a royal and prudent answer in these words: The King will charge his officers to be more sparing to send for his subjects by such process than they have heretofore been. But notwithstanding it is not his mind that his officers shall so far abstain but that they may call his subjects before them in matters and causes necessary, as it hath been done in the time of his good progenitors. And then immediately follows the petition whereupon the Act now in question was made, unto which the King gave his assent: and wherein no mention is made at all of the Chancery or Exchequer.

3. If the Chancery should be understood to be within the statute, yet the statute extends not to this case: for the words are, That the King's subjects after judgments are drawn to answer thereof anew—which must be understood, when the same matter formerly judged is put in issue or question again. But where the cause is called into Chancery only upon point of equity, there, as the point of equity was never in question in the Common Law Court, so the point of law or of fact (as it concerns the law) is never in question in the Chancery. So the same thing is not twice in question, or answered anew; for the Chancery doth supply the Law and not cross it.

4. It appears to our understanding by the clause of error and attaint in the same statute, what jurisdiction it was that the statute meant to restrain: viz: such jurisdiction as did assume to reverse and undo the judgment as error or attaint doth; which the Chancery never doth, but leaves the judgment in peace, and only meddles with the corrupt conscience of the party: for if the Chancery doth assume to reverse the judgment in the point adjudged, it is void, as appears 39° E. 3ⁱ. fol. 14°.

5. We find no precedents of any proceeding to conviction or judgment upon any indictment framed or grounded upon this statute, no more than upon the statutes of Præmunire. And the late indictments are *contra diversa statuta*, not mentioning the particular statutes.

6. Lastly, it were a great mischief to force the subject in all cases to seek remedy in Equity before he know whether the Law will help him or no: which oftentimes he cannot do till after judgment. And therefore he is to seek his salve properly when he hath his hurt.

There be divers other things of weight which we have seen and considered of, whereupon we have grounded our opinion; but we go no further than upon that we have seen.

But because matter of precedent is greatly considerable in this case, and that we have been attended by the Clerks of the Chancery with the precedents of that Court, and have not yet been attended by any officers of the King's Bench with any precedents of indictments, although we required them and gave them convenient time to have attended us, if it shall please your Majesty to direct that the said officers shall attend us with their precedents, we shall give your M. faithful report of them as we have done of the other. All which we most humbly leave to your M. princely judgment.

FRANC. BACON.
HEN. MONTAGUE.
RANULPH CREWE.
HEN. YELVERTON.
JOHN WALTER.

NOW FORASMUCH as mercy and justice be the true supporters of our royal throne, and that it properly belongeth to us in our

princely office to take care and provide that our subjects have equal and indifferent justice ministered to them; and that where their case deserveth to be relieved in course of equity by suit in our Court of Chancery, they should not be abandoned and exposed to perish under the rigour and extremity of our laws:

We in our princely judgment having well weighed and with mature deliberation considered of the several reports of our Learned Counsel and all the parts of them, do approve ratify and confirm as well the practice of our Court of Chancery expressed in their first certificate, as their opinions for the law upon the statutes mentioned in their latter certificate, the same having relation to the Case sent them by our said Chancellor.

And do will and command that our Chancellor or Keeper of the Great Seal for the time being shall not hereafter desist to give unto our subjects upon their several complaints now or hereafter to be made such relief in Equity (notwithstanding any former proceedings at the Common Law against them) as shall stand with the true merits and justice of their cases, and with the former ancient and continued practice and precedency of our Chancery. And for that it appertaineth to our princely care and office only to be Judge over all our Judges and to discern and determine such differences as at any time may or shall arise between our several Courts, touching their jurisdictions, and the same to settle and decide as we in our princely wisdom shall find to stand most with our honour, and the example of our royal progenitors in the best times, and the general weal and good of our people, for which we are to answer unto God who hath placed us over them, our will and pleasure is that our whole proceedings herein by the degrees formerly set down be enrolled in our Court of Chancery, there to remain of record for the better extinguishing of the like questions or differences that may arise in future times.

Per ipm Regem.

18° Julij Anno XIIII.° RR Jacobi, etc.

Of the precedents of indictments which the Learned Counsel had invited the Judges of the King's Bench to produce in vindication of their proceeding, we hear no more. I presume therefore that none were produced; and what Coke might have been able to say in answer to the arguments urged by the Learned Counsel in their certi-

ficate must be left to conjecture. The decree however had not been issued without giving him a fair opportunity for saying what he had to say in defence of his own position. On the 26th of June he had been called before the Council to answer certain charges, formally preferred against him by the Solicitor-General. Of these, his conduct in the matter of the *Præmunire* was one; and on that occasion, if he did not acknowledge the validity of the argument by which the King's order was justified, he did distinctly acknowledge the validity of the order itself. After urging some considerations in excuse rather than justification of what was past, he "added also further" (say the Council in reporting the proceeding to the King) "that for the time to come no man should make any opposition; for that the Judges having received your Majesty's commandment by the Attorney-General that no bill of that nature should be hereafter received, *he and his brethren have caused the same to be entered as an order in the same Court; which shall be observed.*"[1] It was with the allowance therefore of Coke himself (who did not on this occasion find it necessary to wait "till the case should be") that the question was settled, and settled according to the view which Bacon took of it.

But although Coke thereby acknowledged that the King had authority to decide the question, it does not follow that he thought he had decided it rightly: and it is due to him to add that, though he never raised any dispute about it in Council or in Parliament while he lived, there is evidence in the papers which he left behind him that he thought the decision wrong. In the third part of the 'Institutes,' which was published after his death, there is a chapter on *Præmunire;* and in it a sentence occurs, which must have been written later than the 26th of June 1616, and must therefore be accepted (if the editor has made no mistake) as representing his more mature judgment. It seems to imply a total repudiation of this decree of the 18th of July, precedents and all. The censure is indeed so general and so vague that it is impossible to infer from it what the point or nature of his objections was; and it may be that what we have is only a note made in the margin of a treatise which had been written before, and meant for no more than a memorandum to insert at that place an answer to the arguments contained in the decree; which answer was never written, or if written was not found by the editor. However that may be, the censure is too sweeping to be met by anything less than a general discussion of the whole question: a thing which I could not have attempted myself, but which I find supplied to my hand; and as Coke's note, though aimed at the reputation of Ellesmere (whom, as the person specially

[1] Biog. Brit. p. 1390. Art. Coke.

struck at in the attack, he seems to have mistaken for the principal actor in the defence), would really, if the censure were just, be very damaging to Bacon's reputation (who *was* the principal actor all through), it may be well to state the result of an elaborate examination of it by a critic learned in the law.

In the first volume of the *Collectanea Juridica* (printed in 1791) will be found a treatise of fifty-five pages, entitled *A Vindication of the Judgment given by King James in the case of the Jurisdiction of the Court of Chancery,—that the Lord Chancellor should not desist to give relief in Equity, notwithstanding any proceedings at the Common Law; contrary to an opinion lately published after the supposed author's* [Lord Coke's] *death; wherein some errors in the translating and printing of the statutes of* 27 *E.* 3. *cap.* 1. *and* 4 *H.* 4 *cap.* 23 *are discovered.*" The writer begins by observing that after King James's judgment was given, "all things were in peace":—that "the Chancery court went on in the times of the Lord Ellesmere, Lord St. Albans, Lord Coventry, and all others that were Lord Keepers of the great seal of England, ever since, as it had formerly done";—that "the then Lord Chief Justice of the King's Bench [Sir Edward Coke] did never question that judgment, although he lived many years after, and was of four Parliaments, wherein he had both opportunity and power to have done it, if he had not known that judgment to have been according to justice and the laws of the realm: but he desisted, and did openly profess before the Lords of the Privy Council that he would not maintain a difference between the two Courts, nor bring it into question; whereof entry was made in the Council-book 26 June 1616":—nevertheless that "the publisher of his third and fourth book of the Institutes, finding, as it should seem, some old notes, collected when the question was on foot and undecided, had taken the boldness to print them, long after the author's death; and therein had made him to question all again, by mentioning many cases wherein divers persons had been indicted in *Præmunire* upon the statute of 27 E. 3, for seeking relief in Chancery after judgments given between the parties at the common law; and concluding with [these words following]: 'See a privy seal to the contrary, 18 Julii 1616, obtained by the importunity of the Lord Chancellor, being vehemently afraid. *Sed judicandum est legibus*, and no precedent can prevail against an act of Parliament. And besides, the supposed precedents (which we have seen) are not authentical, being most in torn papers: the rest of no credit.'" He then enters into a complete and exhaustive examination of the whole case, taking each point in succession, comparing the copies of the records quoted by Coke with the originals, criticising his inferences,

supplying his omissions, correcting his mistranslations, pointing out the consequences which would follow from his principles of interpretation if impartially applied, and concluding in all points in favour of the impugned decree.

The name of the writer does not appear to be known; but he was evidently a lawyer familiar with the practice of the Chancery and the study of records; and in the absence of all means of guessing what kind of answer Coke would have made, he leaves Bacon clearly in possession of the field.

Coke's defence of himself when called before the Council was pitched in an unusually low key, and so little impressive, that History seems hardly aware that he made any defence at all, or had any opportunity to make one. Hallam only says that after what passed at Whitehall on the 6th of June, "he was suspended from his office, and shortly afterwards dismissed;" taking no notice whatever of the proceeding on the 26th. Lingard is equally silent with regard to that proceeding. And Mr. Gardiner, who knows of it and mentions it, appears to have mistaken the information of the Solicitor-General for the censure of the Board. "On the 26th," he says,[1] "he [Coke] was called before the Council; and after being charged with some pecuniary transactions of doubtful character, in which he had been engaged some years previously, he was *censured* for the words which he had used to the Jury in the cases of Glanville and Allen" [that was the *Præmunire* case]; "for his indecent behaviour in refusing to listen to the argument of the Attorney-General in the King's presence" [that was in the Council on the 6th of June on the *Commendam* case]; "and for his steadfastness" [that is, his refusal to answer the King's question] "when the other Judges gave way." And then, without any allusion to what Coke said in reply, he goes on to tell us that "a few days after, he was again summoned before the Council" and suspended from his seat at the table and from taking his part in the ensuing circuit. Now the fact (as I understand it) was, that the business of the Council was only to witness and report. The King had directed them to call Coke before them and hear what he had to say in answer to certain charges which would be set forth by one of the Learned Counsel. He was summoned accordingly; the charges were set forth by Sir Henry Yelverton; Coke made his answer; and the Council reported the substance of it to the King. Their report was not accompanied with any opinion or suggestion of their own upon the point at issue, and was drawn up in a style of studied respect and moderation, as if they wished to make the best of it. The censure was left to the King;

[1] 'History of England, 1603–1616,' vol. ii. p. 281.

who, not finding Coke's answers satisfactory upon any of the heads, resolved to suspend him for a while from the exercise of his office, and at the same time to set him a holiday task. For the many questionable doctrines of law which he had being laying down of late in support of his official pretensions had not unnaturally suggested an inquiry whether all was good law that was set down for such in his 'Reports:' and passages had been discovered in them (by whose industry I do not exactly know: but I think both Ellesmere and Yelverton were concerned in it, and probably Bacon himself) which were represented to the King as dangerous and requiring correction. Who accordingly directed the Council to call him before them once again, and inform him that it was his pleasure he should forbear for the present to sit at Council or on the Bench: and at the same time—because he was informed that there were in his books of Reports "many exorbitant and extravagant opinions set down and published for positive and good law"—that he should employ the leisure of the vacation in reviewing and correcting them. "And having corrected what in his discretion he found meet in those Reports, his Majesty's pleasure was that he should bring the same privately to himself, that he might consider thereof, as in his princely judgment should be found expedient."

This was done on the 30th of June 1616, and it was all that was done for the present. Of the result of Coke's review of his Reports and the King's final disposal of the case, we shall hear further on in the course of Bacon's correspondence. But it belongs to a later date, and I shall have some important papers to deal with before I come to it.

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